

2008

Bruce Edwards v. Powder Mountain, Inc. : Brief of Appellant

Utah Court of Appeals

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Stephen W. Farr; Steve W. Allred; Mark Ferrin; Attorney for Defendants.

Bruce Edwards; Appellant.

Recommended Citation

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IN THE UTAH STATE COURT OF APPEALS

BRUCE EDWARDS

Plaintiff, -Appellant

v.

POWDER MOUNTAIN INC.; at al.,

Defendants-Appellee.

UTAH COURT OF APPEALS

Appellate Case No. 20080144

Second District Court Case No.

Case No: 060901535

A P P E L L A N T ' S A D D E N D U M S

**Appeal to the Utah Court of Appeals from the decision of the
Second Judicial District Court of Weber County, Judge Jones.**

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**FILED
UTAH APPELLATE COURTS
DEC 05 2008**

ADDENDUM:

1. Order on Motion for Protective Order
2. Ruling (December 6, 2006)
3. Order to Show Cause (December 7, 2006)
4. Ruling (July 16, 2007)
5. Minutes of Oral Argument (June 1, 2007)
6. Order Imposing Rule 11 Sanctions
7. Appearance of Co-Counsel Steven W. Allred
8. Judgment
9. “Appellant’s” Memorandum In Support Of Motion For Summary Judgment That
Defendant Powder Mountain Water & Sewer Termination Policy Is In Violation Of
Utah Code.
10. “Appellant’s” Memorandum In Support Of Motion For Partial Summary Judgment
That Defendant Powder Mountain Water And Sewer Charges For Vacant Lots
Violate Utah Code.
11. “Appellant’s” Memorandum In Support Of Motion for Summary Judgment That
Defendant Powder Mountain Water and Sewer Liens are Overstated.
12. “Appellant’s” Memorandum In Support Of Motion For Partial Summary Judgment
That Defendant Powder Mountain Water And Sewer Billing Policy Violates Utah
Code.
13. “Appellant’s” Memorandum In Support Of Motion for Partial Summary Judgment
That Defendant’s Certification On May 17, 2001, And May 15, 2002, Are Void.

14. “Defendant’s” Memorandum In Opposition to Plaintiff’s Motions for Partial

Summary Judgment;; Request for Attorney’s Fees

15. Statutes, Constitutional Provisions & Rules

Tab 1

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CATHERINE S. CONKLIN (#7487) of
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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

BRUCE EDWARDS,	/	ORDER
Plaintiff,	/	
vs.	/	
POWDER MOUNTAIN INC., at al.,	/	Civil No. 060901535
Defendants.	/	Judge Ernie W. Jones
	/	

THIS MATTER came on regularly for hearing before the HONORABLE ERNIE W. JONES on September 6, 2006. Plaintiff was present and represented himself. Defendants were not present, but were represented by CATHERINE S. CONKLIN. Having heard argument from both sides regarding the various motions before the court, and good cause appearing therefor, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

MOTION FOR PROTECTIVE ORDER

1. Defendants' motion for a protective order regarding Plaintiff's Requests for Admissions is granted. The Court notes that while there is no limitation in the rules of civil

procedure regarding requests for admission, Rule 33 caps interrogatories at 25. The Court also notes that Plaintiff has availed himself of discovery in the previous lawsuits.

2. Given the complex nature of the case, Plaintiff shall be allowed a total of 50 requests for admissions. Plaintiff shall choose which 50 requests he wants Defendants to answer and propound them to Defendants. Defendants shall have 30 days thereafter to answer the requests.

**DEFENDANTS' MOTION FOR ENLARGEMENT OF TIME
AND PLAINTIFF'S MOTION TO STRIKE**

3. The Court considered these motions together, as the subjects were related

4. The Court does not find that Defendants' motion for enlargement of time was brought in bad faith. Defendants' motion is granted, and Defendants' opposition to Plaintiff's motion for declaratory judgment is deemed timely.

5. Plaintiff elected to withdraw his motion to strike.

**PLAINTIFF'S MOTION FOR DECLARATORY JUDGMENT
AND DEFENDANTS' COUNTER-MOTION**

6. The Court concludes, and the parties agreed, that it would be difficult to consider Plaintiff's motion without ruling upon Defendants' counter-motion as well, as both motions address the same issues.

7. In his Motion to Strike, Plaintiff had requested additional time to respond to Defendants' counter-motion. At the hearing, Plaintiff indicated that he still wanted time to file a response.

8. Plaintiff has 20 days from September 6 to file his opposition to Defendants' counter-motion. Defendants shall then file their reply within 10 days.

9. Oral argument on the motion for declaratory judgment and counter-motion shall be held on Wednesday, October 25, 2006, at 10:30 a.m.

DATED this _____ day of September, 2006.

HONORABLE ERNIE W. JONES
District Court Judge

Tab 2

**IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH**

Bruce Edwards,

Plaintiff,

vs.

Powder Mountain, Inc., et al,

Defendants.

RULING

Civil No. 060901535

Judge Ernest W. Jones

Both parties have filed motions for summary judgment. The Court heard oral argument on these motions on October 25, 2006, after which the Court took these motions under advisement. As the motions present very similar issues, the Court will address them together.

The facts material to this case are not in genuine dispute. The Plaintiff, Bruce Edwards, owns unimproved real property located in the Powder Mountain Water and Sewer District, a special improvement district created pursuant to Utah Code Ann. § 17A-2-301 ("District"). The District began charging Mr. Edwards for sewer updates and water/ sewer assessments in 1985. Mr. Edwards has not paid these assessments. The District filed a lien on Mr. Edwards' property in 1995 and again in 1998. The District filed its first complaint in 1998 to enforce its lien. The 1998 action was dismissed without prejudice for a procedural deficiency. In August of 2000, the District again sued Mr. Edwards in an attempt to enforce its lien. In July of 2001, the District moved to

dismiss its action—opting instead to certify the account to Weber County for collection.

The case was dismissed. On May 15, 2002, the District certified Mr.

Edwards’ account to Weber County for collection pursuant to Utah Code Ann. § 17A-2-310(3).¹ Weber County added the unpaid balance to Mr. Edwards’ taxes on May 31, 2002. On March 22, 2006, Mr. Edwards filed a complaint with 31 causes of action naming 20 defendants.

1. Filing a Lien is Not a “Civil Action” Subject to the Statute of Limitations.

Mr. Edwards argues that the 1995 and 1998 liens are void because they were filed outside the statute of limitations. Mr. Edwards claims that the District’s cause of action began to run in 1985—the date of the first assessment Mr. Edwards refused to pay. Mr. Edwards raises several statutes of limitation: Utah Code Ann. § 78-12-23 (six years for an action founded upon a writing); § 78-12-25 (four years for relief not otherwise provided for by law); § 78-12-26 (three years for liability created by state statute).

The statutes of limitation provided in Chapter 12 apply to “civil actions,” and limit when “civil actions may be commenced.” *Id.* at § 78-12-1. “Action” includes all “civil actions wherein affirmative relief is sought,” *id.* at § 78-12-5.3 (emphasis added), and is construed to include “special proceeding[s] of a civil nature.” *Id.* at § 78-12-45. Chapter 12’s statutes of limitation do not, therefore, apply to all remedies or proceedings. *See Rogers v. Division of Real Estate of Dep’t of Business Regulations*, 790 P.2d 102 (Utah Ct. App. 1990) (holding that an administrative disciplinary proceeding was not a

¹ The date of the certification is disputed. The District claims that it certified the account on May 17, 2001. Mr. Edwards argues that the District did not certify the account to Weber County until May 15, 2002 when the District sent a certification letter to Margarit Nersisian of the Weber County Clerk Auditor’s Office. For the purposes of summary judgment, the Court views the evidence in Mr. Edwards’ favor. However, the date of the certification is not material.

civil action subject to the statute of limitations). The filing of a lien is neither a “proceeding” nor a “civil action” and does not seek affirmative relief. *See Beale v. State of Idaho Dep’t of Labor*, 79 P.3d 715 (Idaho 2003) (holding that the filing of a lien is not a “civil action” subject to the general statutes of limitation). Accordingly, the 1995 and 1998 liens were not filed outside the statute of limitations as filing a lien is not subject to the statute of limitations.

2. Mr. Edwards’ Claims Regarding the 1995 and 1998 Liens are Barred by the Statute of Limitations and the Compulsory Counterclaim Rule.

Mr. Edwards has filed a civil action seeking affirmative relief. Mr. Edwards challenges the legality of the assessments and the liens filed in 1995 and 1998. An action to remove the liens must be commenced within six years. Utah Code Ann. § 78-12-23.² The District filed its first action to enforce its lien in 1998 and it is undisputed that Mr. Edwards had notice of the lien at that time. Mr. Edwards’ civil action to remove a lien filed 8 years earlier, or to challenge its underlying obligation, is barred by the statute of limitations.

The party responding to a pleading “shall state as a counterclaim any claim which at the time of pleading the pleader has against any opposing party if it arises out of the transaction or occurrence that is the subject-matter of the opposing party’s claim.” Utah R. Civ. P. 13(a). If such a claim is not raised, it is forever waived. *Kimball v. Campbell*, 699 P.2d 714 (Utah 1985). The purpose of the compulsory counterclaim rule is to ensure that all relevant claims arising out of a given transaction are dealt with together. *Raile*

² Although other statutes of limitation may be more applicable, none of them have periods longer than 6 years.

Family Trust v Promax Dev Corp., 24 P.3d 980 (Utah 2001). In this case, the District filed a complaint on March 1, 2000 to enforce its liens. Mr. Edwards' answer did not contain any counterclaims, nor was one ever raised in that action. The District's case was dismissed with prejudice on July 25, 2001. Any claims relating to the liens or to the District's attempt to enforce them must have been raised in that action. This includes Mr. Edwards' claims for wrongful lien, bad faith in bringing the 2000 lawsuit, and various torts related to the liens. Those claims cannot be asserted now.

3. The District is Authorized by Statute to Certify Delinquent Accounts to Weber County.

Mr. Edwards has raised several tort claims relating to the District's certification of his account to Weber County for collection. The District has, therefore, moved for summary judgment declaring that it acted within its rights in certifying the account to Weber County for collection.

The District "may tax all taxable property in the district for the carrying out of the purposes for which the district was created." Utah Code Ann. § 17A-2-312(1)(c) (2002) (emphasis added) (capping the assessment at .0008 per dollar of taxable property). The District may also, if its attempts to collect these assessments fail, certify the account to Weber County for collection as an unpaid tax. *Id.* at § 17A-2-310(3). The District is not required to pursue Mr. Edwards through court proceedings. The legislature has given special improvement districts the ability to transfer these unpaid accounts to the county for collection as a tax.

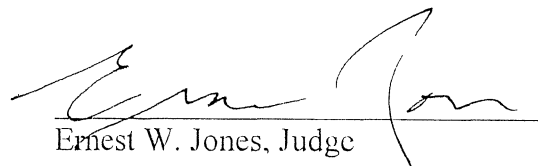
Mr. Edwards challenges the certification on the grounds that the debts are unenforceable under the statute of limitations. Mr. Edwards has not cited any authority

for the proposition that certification pursuant to § 17A-2-310(3) is subject to the statute of limitations. Mr. Edwards argues that § 59-2-1353 prevents collection of unpaid taxes beyond four years. This section allows a county to foreclose on its lien “[i]n all cases where any county claims a lien on real estate for delinquent general taxes which have not been paid for a period of four years. . . .” This section, if it were applicable to the District, would only impose a restriction when it could foreclose on a lien. This section does not provide a statute of limitations for how far back the county can collect. Likewise, section 59-2-102(4)(a) is not helpful to Mr. Edwards. This section deals with property that has “escaped” assessment. The District has dutifully assessed Mr. Edwards’ property each year.

Conclusion

The Court finds that the material facts are not in genuine dispute. The Court denies Mr. Edwards’ motion to declare the 1995 and 1998 liens void. Mr. Edwards’ claims relating to those motions are barred by the compulsory counterclaim rule and the statute of limitations. Any claims, relating to the liens or their underlying obligations, that existed at the time of the 2001 action are waived. The Court also finds that the District was authorized by statute to certify Mr. Edwards’ account to Weber County for collection. Accordingly, the Court grants the District’s motion for summary judgment and denies Mr. Edwards’ motions for summary judgment. Ms. Conklin will please prepare the appropriate order.

Dated this 6 day of December, 2006.


Ernest W. Jones, Judge

Tab 3

**IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY
OGDEN DEPARTMENT, STATE OF UTAH**

Bruce Edwards,

Plaintiff,

vs.

Powder Mountain, Inc., et al,

Defendants.

ORDER TO SHOW CAUSE

Civil No. 060901535

Judge Ernest W. Jones

Having reviewed the Plaintiff's complaint, and on its own motion, the Court finds the following:

1. Plaintiff signed and submitted a complaint to the Court on March 22, 2006.
2. By doing so, Plaintiff certified to the Court that it was "not being asserted to harass or to cause unnecessary delay" or to "needless[ly] increase the cost of litigation." Utah R. Civ. P. 11(b)(1).
3. Plaintiff's complaint raises 31 causes of action against each of the 20 defendants named.
4. Plaintiff's causes of action include: defamation, conspiracy, slander, mail fraud, three counts of RICO violations, and violation of the Hobbs Act.
5. It appears to the Court that Plaintiff took a claim to remove a lien or challenge a debt certified for collection and added two dozen thornier causes of action in an effort get Powder Mountain Water and Sewer's attention. It appears to the Court that

Plaintiff employed this familiar tactic to harass Powder Mountain Water and Sewer District, the special improvement district responsible for the assessments and collection efforts at issue, as well as its employees and directors.

6. It also appears that Plaintiff augmented his complaint in order to increase the cost of litigation to the defendants. Plaintiff himself is pro se and incurs no cost, and expends very little personal effort, in drafting additional causes of action and then watching the defendants work to defeat them. On the other hand, the expense of defending against so many meritless claims significantly burdens the defendants.

7. Plaintiff also certified that each of his allegations and factual contentions “ha[s] evidentiary support.” Utah R. Civ. P. 11(b)(3).

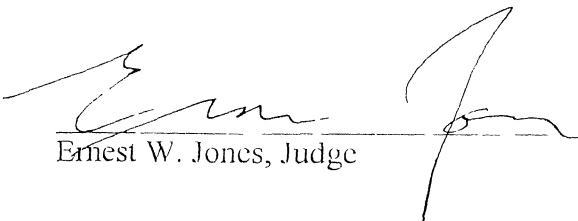
8. Every single allegation in Plaintiff’s complaint must have evidentiary support. Plaintiff’s higher-numbered causes of action are less personalized and contain vague allegations. These allegations must have evidentiary support. The factual allegations contained in Counts 14 through 28 are particularly troublesome to the Court.

8. It appears to the Court that allegations of fact have been made without this required evidentiary support.

9. Pursuant to Utah R. Civ. P. 11(c)(1)(B), the Court orders the Plaintiff to appear at a hearing to be held January 10, 2007 at 10:00 AM to show cause why he has not violated Rule 11(b)’s requirements.

Dated this 7 day of December, 2006.

BY THE COURT


Ernest W. Jones, Judge

Tab 4

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH

BRUCE EDWARDS,

Plaintiff,

vs.

POWDER MOUNTAIN, INC. et al,

Defendants.

RULING

Civil No. 060901535

Judge Ernie W. Jones

The Court issued an order to show cause pursuant to Utah R. Civ. P. 11(c)(1)(B). On June 1, 2007, the Court held a hearing on this order. At the conclusion of the hearing, the Court found that Mr. Edwards had violated Rule 11(b). The Court dismissed Mr. Edwards' complaint and imposed a \$500 fine. The Court expressed its doubt on whether it could award attorney's fees as well. At Defendants' request, the Court gave both parties the opportunity to brief the issue.

1. Attorney's Fees Under Rule 11.

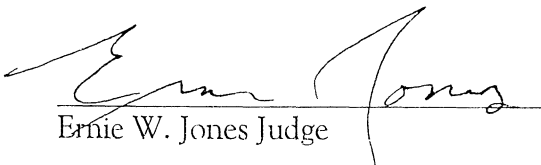
An appropriate Rule 11 sanction "may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney fees. . . ." Utah R. Civ. P. 11(c)(2) (emphasis added). The plain language of the rule authorizes a sanction of attorney's fees only when "imposed on motion."

In this case, the Court issued the order to show cause on its own initiative pursuant to R. 11(c)(1)(B). In addition, all sanctions under Rule 11, “shall be limited to what is sufficient to deter repetition of such conduct. . . .” *Id.* The Court has found dismissal with prejudice and \$500 to be sufficient deterrence. The Court denies the request to include attorney’s fees as part of Mr. Edward’s Rule 11 sanction.

2. Awarding Attorney’s Fees under Section 78-27-56.

In their brief, the Defendants cite Utah Code Ann. § 78-27-56 for the proposition that the sanction must include their attorney’s fees. Essentially, Defendants seek an order awarding them attorney’s fees under this statute. “An application to the court for an order shall be by motion. . . .” Utah R. Civ. P. 7(b). Unless made during a hearing, the motion must be in writing. *Id.* Here, the Defendants requested the opportunity to submit briefs on whether the Court could include attorney’s fees as part of its Rule 11 sanction—they did not, however, make a motion at that hearing for attorney’s fees under this statute. If Defendants’ choose to request such an order, it must be done by motion.

Dated this 16 day of July, 2007.


Ernie W. Jones Judge

Tab 5

SECOND DISTRICT COURT - OGDEN
WEBER COUNTY, STATE OF UTAH

BRUCE EDWARDS,	:	MINUTES
Plaintiff,	:	ORAL ARGUMENT
	:	
	:	
vs.	:	Case No: 060901535 PR
	:	
POWDER MOUNTAIN INC Et al,	:	Judge: ERNIE W JONES
Defendant.	:	Date: June 1, 2007

Clerk: vennaw

PRESENT

Plaintiff(s): BRUCE EDWARDS

Defendant's Attorney(s): STEVEN W ALLRED
STEPHEN W FARR
MARK A FERRIN

Video

Tape Number: EWJ 060107 Tape Count: 10:04

HEARING

COUNT: 10:04

This is the time set for oral argument on the Court's own motion regarding whether to impose Rule 11 sanctions against the plaintiff. The plaintiff is present and appears pro se. Mark Ferrin is present representing the Landowner's Association. Stephen

Farr is present representing various defendants, and Steven Allred is present representing Powder Mountain. The plaintiff addresses the Court.

COUNT: 11:24

Attorney Allred addresses the Court.

COUNT: 11:28

Attorney Farr addresses the Court. Mr. Edwards again addresses the Court. The Court makes various findings for the record, and finds that the plaintiff did violate Rule 11. The Court imposes a sanction of \$500 against Mr. Edwards, which is to be paid with the Clerk's office. The Court also dismisses the

Case No: 060901535
Date: Jun 01, 2007

complaint. The Court finds that because the Court brought this motion, attorney's fees may not be awarded, however, defense counsel are allowed

20 days to submit written briefs regarding that issue, and Mr. Edwards is allowed 20 additional days to respond. If counsel believe attorney fees are appropriate, they shall also include the amount being requested along with the briefs.

To clarify, defendants shall submit by June 20, 2007 and Mr. Edwards is to respond by July 11, 2007. The Court clarifies that the dismissal is without prejudice. Attorney Farr will prepare an order for signature and entry, and submit.

STATUS TRACKING is scheduled.

Date: 07/11/2007

Time: 08:30 a.m.

Location: 4th Floor Southeast
Second District Court
2525 Grant Avenue
Ogden, UT 84401

Before Judge: ERNIE W JONES

Tab 6

IN THE SECOND JUDICIAL DISTRICT COURT
IN AND FOR WEBER COUNTY, STATE OF UTAH

BRUCE EDWARDS,

Plaintiff,

vs.

POWDER MOUNTAIN, INC., et al,

Defendants.

**ORDER IMPOSING
RULE 11 SANCTIONS**

Civil No. 060901535

Judge Ernest W. Jones

The Court, on its own initiative, issued an order to show cause pursuant to Utah R. Civ. P. 11(c)(1)(B). The Court held a hearing on this order on June 1, 2007. Mr. Edwards was present representing himself. Attorney Steven W. Allred was present representing Powder Mountain. Attorney Stephen W. Farr was present representing various defendants. Attorney Mark Ferrin was present representing the Landowners' Association. Having heard from Mr. Edwards and for good cause showing, the Court finds as follows:

1. Plaintiff signed and submitted a complaint to the Court on March 22, 2006.
2. By doing so, Plaintiff certified to the Court that it was "not being asserted to harass or to cause unnecessary delay" or to "needless[ly] increase the cost of litigation." Utah R. Civ. P. 11(b)(1).

3. Plaintiff's 60-page complaint raised 31 causes of action against each of the 20 individual defendants named.

4. The Court finds that there was no factual or legal basis for many of the causes of action in Plaintiff's complaint. Some of these meritless causes of action include: defamation, conspiracy, slander, mail fraud, three counts of RICO violations, and violation of the Hobbs Act.

5. The Court finds that Plaintiff took a claim to remove a lien or challenge a debt certified for collection and added two dozen thornier causes of action in an effort to get Powder Mountain Water and Sewer's attention. The Court finds that Plaintiff did so in order to harass Powder Mountain Water and Sewer District, the special improvement district responsible for the assessments and collection efforts at issue, as well as its employees and directors.

6. The Court finds that Plaintiff augmented his complaint in order to increase the cost of litigation to the defendants. Plaintiff himself is pro se and incurs no cost, and expends very little personal effort, in drafting additional causes of action and then watching the defendants work to defeat them. On the other hand, the expense of defending against so many meritless claims significantly burdens the defendants.

7. Plaintiff also certified that each of his allegations and factual contentions "ha[d] evidentiary support." Utah R. Civ. P. 11(b)(3).


8. The Court finds that Plaintiff's complaint contains many allegations of fact that lack any evidentiary support.

9. Based upon the foregoing findings, the Court sanctions Plaintiff \$500, which Plaintiff is to pay into court. Plaintiff is to pay this amount within 30 days of the date of this order.

10. The Court also dismisses Plaintiff's complaint without prejudice.

Dated this 25 day of July, 2007.

BY THE COURT


Ernest W. Jones, Judge

Tab 7

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1007 E. North Bonneville Drive
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Telephone: (801) 550-9611
Attorney for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY, STATE OF UTAH

BRUCE EDWARDS,

Plaintiff,

vs.

POWDER MOUNTAIN INC., POWDER
MOUNTAIN WATER AND SEWER,
et al.

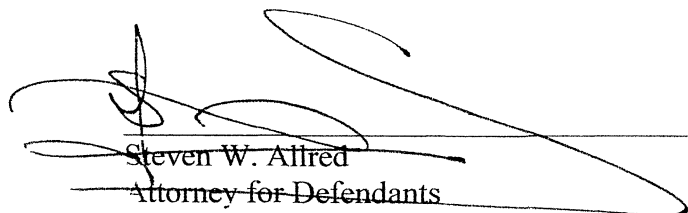
Defendants

APPEARANCE
OF
CO-COUNSEL

Case No. 060901535
Judge Ernie W. Jones

COMES NOW, Steven W. Allred and enters his appearance as co-counsel for the
Powder Mountain Water and Sewer District Defendants.

DATED this 12th day of February, 2007.


Steven W. Allred
Attorney for Defendants

Tab 8

STEPHEN W. FARR #1042

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Medsker, Olds & Nichols, LLC
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205 26th Street, Suite 34
Ogden, Utah 84401
Telephone: (801) 394-5526
Facsimile: (801) 392-4125

Attorney for Defendants

IN THE SECOND JUDICIAL DISTRICT COURT, WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

BRUCE EDWARDS,	:	JUDGMENT
Plaintiff,	:	
vs.	:	
POWDER MOUNTAIN INC., et. al.,	:	Case No.: 060901535
Defendants.	:	Judge: Ernie W. Jones

This matter came on regularly before the Court on the 1st day of June, 2007. Plaintiff, Bruce Edwards, was present in Court and represented himself. Defendants and/or their representatives were all present in Court and were represented by Mark Ferrin, attorney for the Defendant Landowners Association, Stephen W. Allred, attorney for the certain Defendants, and Stephen W. Farr, attorney for certain Defendants.

On June 1, 2007, the Court ordered the dismissal of Plaintiff's Complaint pursuant to Rule 11. The Court allowed the parties time to brief the issue of whether attorney fees should be awarded to the Defendants.

On the 16th day of July, 2007, the Court ruled that the Defendants could not recover attorney fees pursuant to Rule 11, because the motion was filed by the Court, rather than by the

attorneys for the Defendants. However, the Court indicated that the Defendants may be entitled to attorney fees pursuant to UCA §78-27-56, but that the Defendants must file a motion in writing to recover those attorney fees.

On the 4th day of September, 2007, attorney Stephen W. Farr filed a motion and memorandum for attorney fees pursuant to UCA §78-27-56 on behalf of the Defendant Powder Mountain.

On September 17, 2007, the Plaintiff filed a motion and opposition together with a memorandum and affidavit.

On September 25, 2007, attorney Steve Allred filed a motion for joinder and in support of attorney fees. Mr. Allred represented several of the Defendants in conjunction with the attorney Stephen W. Farr.

On the 9th day of October, 2007, Plaintiff filed a motion and memorandum in opposition to attorney Allred's joinder motion. A notice to submit was filed by the Defendants.

The Court having reviewed the briefs rules as follows:

1. In order to award attorney fees under UCA §78-27-56, the Court must find that the Complaint was without merit and was not brought in good faith.
2. The Court finds that Plaintiff's Complaint was without merit and was not in brought in good faith.
3. The Court previously ruled on June 1, 2007 that there was no basis in law or fact to support the pleadings filed by the Plaintiff. The Court dismissed the Plaintiff's Complaint and imposed sanctions upon the Plaintiff. The Defendants were clearly the prevailing parties in this lawsuit.

4. The Court found that the Complaint was designed to harass the Defendants. The Defendants sued twenty (20) people who are not directly involved in the operation of the Powder Mountain Sewer District.

5. The Court found that the Complaint contained many claims, which were frivolously and without merit. The Hobbs Act, Rico Statute and Mail Fraud causes of action were totally without merit.

6. The Complaint contained 31 causes of action. Only the lien cause of action was a valid cause of action.

7. An example of how the Plaintiff sought to increase the cost of litigation is that the Plaintiff filed a request for admissions, which contained several hundred questions. The Court entered an order that Plaintiff could only seek admissions up to 50 questions. The Plaintiff never resubmitted his request for submissions to the Defendants after the restriction was imposed.

8. It appears to the Court that the sole purpose of the request for admissions was to harass the Defendants or to increase the cost of litigation.

9. The Court finds that attorney fees are appropriate in this case.

10. A Complaint containing 31 causes of action against 20 defendants (over 60-page complaint) was designed to increase the cost of litigation.

11. Although the Court dismissed the Complaint and imposed a \$500 sanction upon the Plaintiff, the Court believes the Defendants are entitled to attorney fees, pursuant to UCA §78-27-56.

12. The Court has reviewed the affidavit of fees submitted by attorney Stephen W. Farr and attorney Steve Allred. The Court finds the attorney fees are reasonable.

13. The Court awards attorney fees to the parties represented by attorney Stephen W. Farr in the sum of \$10,055.78.

14. The Court awards attorney fees to the parties represented by attorney Steve Allred in the sum of \$5,400.00.

15. Plaintiff is ordered to pay the attorney fees to respective counsel as ordered.

16. The Court orders attorney Stephen W. Farr to prepare a formal order and judgment for signature and entry.

DATED this _____ day of December, 2007.

Ernie W. Jones
Second District Court Judge

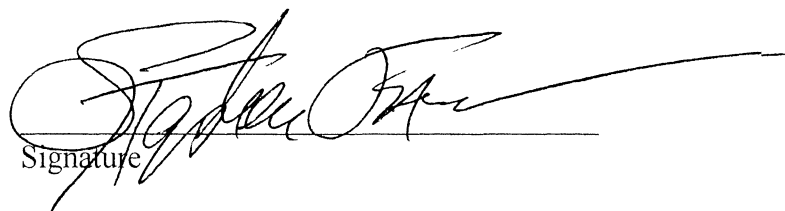
**CERTIFICATE OF MAILING AND
NOTICE OF SUBMISSION**

I hereby certify that the foregoing was this day mailed to the persons indicated below who are further notified that pursuant to URCP 7(f)(2), notice of objection shall be submitted to the Court and counsel within five days after service, plus three days mailing, to the following:

Bruce Edwards
Plaintiff Pro Se
P.O. Box 1886
Ogden, Utah 84402

Steven W. Allred
Attorney for Defendants
1007 East North Bonneville Drive
Salt Lake City, Utah 84103

Mark Ferrin
Attorney for Defendants
3361 North River Drive
P.O. Box 150
Eden, Utah 84310


Signature

Tab 9

Bruce Edwards
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**IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH**

BRUCE EDWARDS Affiant, v. POWDER MOUNTAIN INC.; POWDER MOUNTAIN WATER AND SEWER; at al., Defendants.	MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT THAT DEFENDANT POWDER MOUNTAIN WATER & SEWER TERMINATION POLICY IS IN VIOLATION OF UTAH CODE Case No. 060901535 Judge ERNIE W. JONES
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Plaintiff, Pro Se, hereby submits that Defendant Powder Mountain Water & Sewer termination fees are in violation of Utah Code.

There is no genuine issue as to any material fact concerning Plaintiff's motion.

Therefore, Plaintiff hereby moves this Court for partial summary judgment that Defendant Powder Mountain Water & Sewer termination charges are in violation of the Utah State Code.

STATEMENT OF MATERIAL FACTS

1. That Defendant Powder Mountain Water and Sewer is a Special Improvement District created by Weber County. See Affidavit of Bruce Edwards ¶ 2.
2. That on or about June 25, 1985, Defendant Powder Mountain Water and Sewer District provided Plaintiff the July 1985, "Water Fee Schedule and Agreement". Affidavit of Edwards ¶ 3.

3. The July 1985, "Water Fee Schedule and Agreement" stated that "The value of your water connection is at present \$4,000.00." "This came with the purchase of your lot." Affidavit of Edwards ¶ 4.
4. The "Sewer Fees and Accessment 1985" stated the "New connections \$12,000.00 each". Affidavit of Edwards ¶ 5.
5. The "Sewer Fees and Accessment 1985" stated "Evaluation of the sewer facilities owned by Powder Mtn. West, Phase 1 lot owners was made. This value was determined to be \$8,000.00. This value applied to the new connection price determines the up grade price of \$4,000.00". Affidavit of Edwards ¶ 6.
6. The July 1985, "Water Fee Schedule and Agreement" stated "If your bill for your water accessment becomes over (90) ninety days delinquent you will forfeit your connection ownership and when you wish to make a connection you will have to reapply." Affidavit of Edwards ¶ 7.
7. The July 1985, "Water Fee Schedule and Agreement" stated "Interest will be charged at the rate of 2% per month on the unpaid balance after 30 days" and "When 90 days delinquent a notice will be sent notifying you that your contract with the water company is being terminated". Affidavit of Edwards ¶ 8.
8. The July 1985, "Water Fee Schedule and Agreement" stated "You will be given 30 days following notification to correct default by paying all back fees plus \$100.00 termination procedure fees". Affidavit of Edwards ¶ 9.
9. On May 4, 1988, Powder Mountain Water and Sewer District meeting was held at which time "The board felt that any further action at this time was not necessary because we are not furnishing any water or sewer service at present time but to let them reapply when the connections are needed at the going rate". Affidavit of Edwards ¶ 10.

10. That the “Schedule of Account Receivable” included “sewer charge”, “water charge” and “sewer update” from 7-1-85 to 1-2-1990. Affidavit of Edwards ¶ 11.
11. On June 14, 1989, the Board of Directors of Defendant made a motion to “send registered letter to delinquent accounts that have not made arrangements with the district to bring them current and inform them that their connection rights have been terminated as of July 1, 1989.” Affidavit of Edwards ¶ 12.
12. That Plaintiff’s lot at all times has been vacant. Affidavit of Edwards ¶ 13.
13. That Plaintiff has been charged by defendant \$30.00 per quarter since July 1, 1985, through March 31, 1990, for “water charge(s)”. Affidavit of Edwards ¶ 14.
14. That it is Defendant Powder Mountain Water & Sewer’s current policy to charge vacant lots water charges. Affidavit of Edwards ¶ 15.
15. That it is Defendant Powder Mountain Water & Sewer’s current policy to charge vacant lots sewer charges. Affidavit of Edwards ¶ 16.
16. That on December 6, 1995, it was Powder Mountain Water & Sewer policy to charge 2% interest per month on the unpaid balance on delinquent accounts. Affidavit of Edwards ¶ 17.
17. As of December 6, 1995, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided (5) “If the bill has not been paid by the end of the quarter, a registered notice will be sent notifying you that your account and water services will be terminated”. Affidavit of Edwards ¶ 18.
18. As of December 6, 1995, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided (6) “A thirty day grace period will be given following this notification during which time default may be corrected by paying all the back fees plus a \$100 fee for reinstatement of services. This charge is for each equivalent unit and not per meter”. Affidavit of Edwards ¶ 19.

19. As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided that the Water connection fee was \$5,000.00. Affidavit of Edwards ¶ 20.
20. As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided that the Sewer connection fee was \$6,500.00. Affidavit of Edwards ¶ 21.
21. As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided (5) “If the bill has not been paid by the end of the quarter, a registered notice will be sent notifying you that the water services will be terminated”. Affidavit of Edwards ¶ 22.
22. As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided (6) “A thirty day grace period will be given following this notification during which time default may be corrected by paying all the back fees . Affidavit of Edwards ¶ 23.
23. As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided “(7.) Following the above termination and the expiration of the allotted time it will be necessary to make a new application for service and pay the new connection fees that are being charged at the time.” Affidavit of Edwards ¶ 24.
24. That it has been Defendant Powder Mountain Water & Sewer’s policy at all times since Plaintiff has been terminated to charge Plaintiff a new connection fee for sewer. Affidavit of Edwards ¶ 25.
25. That it has been Defendant Powder Mountain Water & Sewer’s policy at all times since Plaintiff has been terminated to charge Plaintiff a new connection fees for water. Affidavit of Edwards ¶ 26.

26. Defendant Powder Mountain Water and Sewer Water Fee Schedule and Agreement July 1985 stated that “If not activated all agreements will be terminated as specified above”. Affidavit of Edwards ¶ 27.
27. Plaintiff has refused to sign any agreement with Defendant Powder Mountain Water and Sewer. Affidavit of Edwards ¶ 28.

ARGUMENT

Defendant Powder Mountain Water & Sewer District’s termination policies for failure to pay for water and sewer charges are in violation of Utah Code.

In July 1985, Defendant Powder Mountain Water & Sewer District policy was that “When 90 days delinquent a notice will be sent notifying you that your contract with the water company is being terminated" and "when you wish to make a connection you will have to reapply" at the “going rate”. Stmt of Facts ¶¶ 6, 7 & 9.

The July 1985, “Water Fee Schedule and Agreement” stated “If your bill for your water accessment becomes over (90) ninety days delinquent you will forfeit your connection ownership and when you wish to make a connection you will have to reapply”. Stmt of Facts ¶ 6.

On June 14, 1989, the Board of Directors of Defendant Powder Mountain Water & Sewer made a motion to “send a registered letter to delinquent accounts that have not made arrangements with the district to bring them current and inform them that their connection rights have been terminated as of July 1, 1989.” Stmt of Facts ¶ 11.

Defendant Powder Mountain Water & Sewer unilaterally determined that Plaintiff’s interest in Plaintiff’s water connection that had a value in 1985 of \$4,000.00 and Plaintiff’s interest in the sewer facilities in the amount of \$8,000.00 would be forfeited by Plaintiff upon default of the water and sewer fees that Defendant Powder Mountain Water & Sewer claimed due. Stmt of Facts ¶¶ 3, 5, 9, 11 & 23.

As of June 1, 2005, Defendant Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided “If the bill has not been paid by the end of the quarter, a registered notice will be sent notifying you that the water services will be terminated” and “Following the above termination and the expiration of the allotted time it will be necessary to make a new application for service and pay the new connection fees that are being charged at the time.” Stmt of Facts ¶¶ 21 & 23.

Prior to June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer’s policy was that “If the bill has not been paid by the end of the quarter, a registered notice will be sent notifying you that your account and water services will be terminated”. and “A thirty day grace period will be given following this notification during which time default may be corrected by paying all the back fees plus a \$100 fee for reinstatement of services. This charge is for each equivalent unit and not per meter”. Stmt of Facts ¶¶ 17 & 18.

Beginning July 1985, Powder Mountain Water & Sewer policy was “You will be given 30 days following notification to correct default by paying all back fees plus \$100.00 termination procedure fees” pursuant to the July 1985, “Water Fee Schedule and Agreement”. Stmt of Facts ¶ 8.

As of June 1, 2005, Powder Mountain Water & Sewer Improvement District Connection & Sewer Fees for Water & Sewer provided that the water connection fee was \$5,000.00 and that the sewer connection fee was \$6,500.00. Stmt of Facts ¶¶ 15 & 16.

Pursuant to Defendant Powder Mountain Water & Sewer policies regarding termination for failure to pay water and sewer service fees by the end of the quarter Defendant Powder Mountain Water & Sewer terminates your water services. Defendant Powder Mountain Water & Sewer then requires the payment of the new connection fees that are being charged at the time which now represents \$11,500.00, water connection fee of \$5,000.00 and the sewer connection fee of \$6,500.00. Stmt of Facts ¶¶ 19, 20 & 23.

In Plaintiff's case Defendant Powder Mountain Water and Sewer on May 31, 2002, certified a lien in the amount of \$24,140.10 to the Weber County Clerk Auditor's Office which added Defendant Powder Mountain Water and Sewer District's lien as an assessment on Plaintiff's property. If Plaintiff was to fully satisfy the lien with the County that was filed by Defendant Powder Mountain Water and Sewer pursuant to Defendant Powder Mountain Water and Sewer's policy Plaintiff would not have obtained any interest in a water and or sewer connection. Plaintiff would be required by Defendant Powder Mountain Water and Sewer's policy to pay an additional \$11,500.00 to obtain a water and sewer connection. In addition, pursuant to Defendant Powder Mountain Water and Sewer's policy, Plaintiff would have forfeited Plaintiff's fully paid interest in the water and sewer facilities in the amount of \$12,000.00 which would accrue to Defendant Powder Mountain Water and Sewer interest. Stmt of Facts ¶¶ 3, 5, 19 & 20.

In 1985 Defendant Powder Mountain Water and Sewer determined that Plaintiff's water connections value was \$4,000.00 and the value of Plaintiff's ownership in the sewer facilities was \$8,000.00. Defendant Powder Mountain Water and Sewer after crediting Plaintiff with \$12,000.00 claimed that Plaintiff still owed \$4,000.00 for a total of \$16,000.00 for water and sewer assessment. Stmt of Facts ¶¶ 2, 3, 4, 5, 19 & 20.

Twenty years later, Defendant Powder Mountain Water and Sewer now charges \$11,500.00 for water and sewer connections. Plaintiff should be entitled to \$4,500.00 plus interest at least in the amount of 2% per month for 20 years. Stmt of Facts ¶¶ 19 & 20.

Plaintiff's property has at all times been vacant and Defendant Powder Mountain Water and Sewer charged Plaintiff water and sewer service fees on a vacant lot from July 1985 to March 31, 1990. That it has been Defendant Powder Mountain Water and Sewer's policy to charge vacant lots for water service fees and sewer service fees since July 1985. That it has been Defendant Powder Mountain

Water and Sewer's policy at all times since Plaintiff has been terminated to charge Plaintiff for new connection fees for sewer and water. Stmt of Facts ¶¶ 12, 13, 14, 15, 24 & 25.

Utah Code has copious references to the failure of an owner to pay water and or sewer charges to a district, but there is no reference that allows a district to terminate your contract or even water services. In addition penalties for failure to pay the district for water and sewer services provided are provided under Utah code. Utah Code does not provide that you have to reapply at the "going rate" or forfeit previous fees paid.

10-7-11 provides that failure to pay the "District" may cause the water to be shut off from such premises if the owner fails to pay for water furnished.

10-7-11. Failure to pay for service

In case the owner of any of the premises mentioned in Section 10-7-10, or the tenant or occupant, shall fail to pay for water furnished such owner, tenant or occupant, according to such ordinances, rules or regulations enacted or adopted, the city or town **may cause the water to be shut off from such premises**, and shall not be required to turn the same on again until all arrears for water furnished shall be paid in full.

The district's recourse for an owner's failure to pay water furnished is to cause the water to be shut off from such premises, until all arrearage for water furnished is paid in full.

17A-2-310 provides that "The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district."

17A-2-310. Certification of bond issue to county legislative body -- Tax levy -- Payment of revenue bonds -- Election on general obligation bonds and revenue bonds -- Bonds for sewer purposes -- Collection of charges.

(3) When bonds are issued under this part in whole or in part for sewer purposes and the district operates a waterworks system, provision may be made in the bond resolution under which charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer service is paid at the same time. **The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district.**

17A-2-310-3 provides that "charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer service is

paid at the same time”. Plaintiff had fully paid Plaintiff’s 1985 water connection in the amount of \$4,000.00. Powder Mountain Water and Sewer credited Plaintiff \$8,000.00 for Plaintiff’s sewer interest leaving a balance that Powder Mountain Water and Sewer claims due of \$4,000.00. Powder Mountain Water and Sewer’s termination policy now requires Plaintiff to pay a water connection fee of \$5,000.00 and a sewer connection fee of \$6,500.00 when Plaintiff was credited \$4,000.00 for Plaintiff’s water interest and \$8,000.00 for Plaintiff’s sewer interest in 1985.

17B-2-802-1(b) provides that “if a customer fails to pay for water furnished or sewer service provided to the customer’s property, discontinue furnishing water or providing sewer service to the property.”

17B-2-802. Authority to require written application for water or sewer service and to terminate for failure to pay—Limitations.

(1) A local district that owns or controls a system for furnishing water or providing sewer service may:

(a) before furnishing water or providing sewer service to a property, require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property, whether occupied by the owner or by a tenant or other occupant, according to the rules and regulations adopted by the local district; and

(b) **if a customer fails to pay for water furnished or sewer service provided to the customer’s property, discontinue furnishing water or providing sewer service to the property**, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid, subject to Subsection (2).

17B-2-802 states that the district may “discontinue furnishing water or providing sewer service to the property, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid”. For reinstatement of services the only requisite the district can demand is that “all amounts for water furnished or sewer service provided” are paid. The district can not demand a reconnection fee nor demand that failure to pay results in the forfeiture of any prior “connection(s)”. Defendant Powder Mountain Water and Sewer’s termination policy and forfeiture policy both violate Utah Code.

Further 17B-2-802-1 “before furnishing water or providing sewer service to a property, require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property”. Defendant Powder Mountain Water and Sewer required signed contracts in July 1985 and stated that “If not activated all agreements will be terminated as specified above. Plaintiff refused to sign any agreement with Defendant Powder Mountain Water and Sewer. 17B-2-802-1 does not authorize Defendant Powder Mountain Water and Sewer to provide water service and or sewer service to Plaintiff’s vacant lot and therefore Defendant Powder Mountain Water and Sewer charges for water service and sewer service not authorized by Plaintiff is unlawful. Stmt of Facts ¶¶ 26 & 27.

Further 10-7-10.5 provides that “if an owner fails to pay for water furnished or sewer service provided to the owner’s property” the district may “discontinue furnishing water or providing sewer service to the property”.

10-7-10.5. Authority to require written application for water or sewer service and to terminate service for failure to pay—Limitations.

(1) A municipality that owns or controls a system for furnishing water or for providing sewer service may:

- a) before furnishing water or providing sewer service to a property, require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property, respectively, whether occupied by the owner or by a tenant or other occupant, according to the ordinances, rules, and regulations adopted by the municipality; and
- (b) if an owner fails to pay for water furnished or sewer service provided to the owner’s property, **discontinue furnishing water or providing sewer service to the property**, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid, subject to Section 2.

Again the only requisite for reinstatement of services is that the “water furnished or sewer service provided” have to be paid for in full. Defendant Powder Mountain Water and Sewer’s demands over and above the requirements as provided under Utah Code are neither enforceable nor permissible.

10-8-38-2 –(c) If a person “fails to pay for the sewer service as required under applicable municipal ordinances”, then the “municipality may cause the water to be shut off from the premises...”.

**10-8-38. Drainage and sewage systems -- Construction regulation and control
Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to tenants -- Failure to pay for service -- Service outside municipality.**

(2) (a) In order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant, a municipality may:

(i) require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy; and

(ii) make a reasonable charge for the use of the sewer system.

(b) A municipality operating a waterworks system and a sewer system or sewage treatment plant may:

(i) make one charge for the combined use of water and the services of the sewer system or sewage treatment plant; and

(ii) adopt an ordinance requiring a property owner desiring water and sewer service to submit a written application, signed by the owner or the owner's authorized agent, agreeing to pay, according to the ordinance enacted by the municipality, for the water and sewer service furnished the owner.

(c) (i) If a person fails to connect to the sewer when connection is required under Subsection (2)(a)(i) or fails to pay for the sewer service as required under applicable municipal ordinances, then the **municipality may cause the water to be shut off from the premises until the person has:**

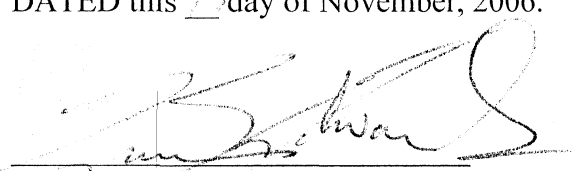
(A) hooked up to the sewer at the person's own expense; or

(B) paid in full for all sewer service.

Utah Codes many references to the failure of an owner to pay for water and or sewer charges to a district, do not provide the district in the form of termination and reapplication for service and payment of the new connection fees being charged at that time far exceed the authority Defendant Powder Mountain Water and Sewer District is provided under Utah code. Defendant Powder Mountain Water and Sewer District unilateral forfeiture of Plaintiffs prior vested interest in the sewer facilities in the amount of \$8,000.00 and water in the amount of \$4,000.00 in addition violates Utah Code.

For the foregoing reasons, this Court should grant partial summary judgment declaring Defendant Powder Mountain Water and Sewer District termination policy and forfeiture policy is and has been in violation of the laws of the State of Utah.

DATED this 17th day of November, 2006.



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IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

BRUCE EDWARDS

Plaintiff,
v.

POWDER MOUNTAIN INC.; at al.,

Defendants.

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT THAT DEFENDANT
POWDER MOUNTAIN WATER AND
SEWER CHARGES FOR VACANT
LOTS VIOLATE UTAH CODE**

Case No. 060901535

Judge ERNIE W. JONES

Plaintiff, Pro Se, hereby submits that Defendant Powder Mountain Water & Sewer charges for “use fee(s)” for vacant lots for water and sewer are in violation of Utah Codes.

There is no genuine issue as to any material fact concerning Plaintiff’s motion.

Therefore, Plaintiff hereby moves this Court for partial summary judgment that Defendant Powder Mountain Water & Sewer charges for water and sewer “use fees” on vacant lots are in violation of the Utah State Codes.

STATEMENT OF MATERIAL FACTS

1. That Defendant Powder Mountain Water and Sewer is a Special Improvement District created by Weber County. See Affidavit of Bruce Edwards ¶ 2.
2. That on or about June 25, 1985, Defendant Powder Mountain Water and Sewer District provided Plaintiff the July 1985, “Water Fee Schedule and Agreement” and 1985 “Sewer Fees and Accessment”. Affidavit of Edwards ¶ 3.

3. That the “Water Fee Schedule and Agreement July 1985” states “It has therefore become necessary to establish both a fee for non use on non connected lots as well as those connected to the system”. Affidavit of Edwards ¶ 4.
4. That the “Water Fee Schedule and Agreement July 1985” states “Following is the Fee schedule: (1) Non Connected non use lots \$10.00 per month. (2) Connected Lots \$15 month. This provides 15000 gallons of water.” Affidavit of Edwards ¶ 5.
5. That the “Sewer Fees and Accessment 1985” states “all lots whether connected to the sewer or not will be charged a \$25.00 per month use fee”. Affidavit of Edwards ¶ 6.
6. On May 4, 1988, Defendant Powder Mountain Water and Sewer District meeting was held at which time “The board felt that any further action at this time was not necessary because we are not furnishing any water or sewer service at present time but to let them reapply when the connections are needed at the going rate”. Affidavit of Edwards ¶ 7.
7. That the “Schedule of Account Receivable” included “sewer charge”, “water charge” and “sewer update from 7-1-85 through 1-2-1990. Affidavit of Edwards ¶ 8.
8. That on June 14, 1989, the Board of Directors of Defendant Powder Mountain Water and Sewer District made a motion to “send registered letter to delinquent accounts that have not made arrangements with the district to bring them current and inform them that their connection rights have been terminated as of July 1, 1989.” Affidavit of Edwards ¶ 9.
9. That Plaintiff’s lot at all times has been vacant. Affidavit of Edwards ¶ 10.
10. That there are no buildings on the subject property. Affidavit of Edwards ¶ 11.
11. Defendant Powder Mountain Water and Sewer District has charged Plaintiff \$75.00 per quarter since July 1, 1985, through March 31, 1990, for “sewer charge(s)”. Affidavit of Edwards ¶ 12.
12. Defendant Powder Mountain Water and Sewer District has charged Plaintiff \$30.00 per

quarter since July 1, 1985, through March 31, 1990, for “water charge(s)”. Affidavit of Edwards ¶ 13.

13. Defendant Powder Mountain Water and Sewer District has charged Plaintiff late fees on the sewer charges and water charges. Affidavit of Edwards ¶ 14.

14. Defendant Powder Mountain Water and Sewer District has charged Plaintiff interest on the sewer charges and water charges. Affidavit of Edwards ¶ 15.

15. That it is Defendant Powder Mountain Water and Sewer District’s current policy to charge vacant lots a “sewer charge”. Affidavit of Edwards ¶ 16.

16. That it is Defendant Powder Mountain Water and Sewer District current policy to charge vacant lots a “water charge”. Affidavit of Edwards ¶ 17.

17. Defendant Powder Mountain Water and Sewer District has never supplied any water to Plaintiff’s lot. Affidavit of Edwards ¶ 18.

18. Plaintiff has never used Defendant Powder Mountain Water and Sewer District’s sewer system. Affidavit of Edwards ¶ 19.

19. That Defendant Powder Mountain Water and Sewer District has billed other vacant lots the same fees that Plaintiff has been charged. Affidavit of Edwards ¶ 20.

20. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective date 6-01-2005 stated that “Water Service Fees (1.) Non connected \$19.50 per month and (2) connected \$29.50 per month”. Affidavit of Edwards ¶ 21.

21. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective date 6-01-2005 stated that “Sewer Monthly Service Fees (1.) \$29.50 for non connected lots and (2) \$34.00 for connected lots”. Affidavit of Edwards ¶ 22.

ARGUMENT

Defendant Powder Mountain Water & Sewer charges for water and sewer “use fee(s)” for

vacant lots are in violation of Utah Codes

Defendant Powder Mountain Water & Sewer has charged Plaintiff for Plaintiff's vacant lot \$75.00 per quarter since July 1, 1985 through March 31, 1990 for "sewer charge(s)" and \$30.00 per quarter since July 1, 1985 through March 31, 1990 for "water charge(s)". That the "Sewer Fees and Assessment 1985" states "all lots whether connected to the sewer or not will be charged a \$25.00 per month use fee" (emphasis added). That it is Defendant Powder Mountain Water & Sewer's policy to bill vacant lots a monthly "use fee" for water and sewer. Stmt of Facts ¶¶ 5, 11, 12, 15, 16, 19, 20 & 21.

Plaintiff lot's is vacant, there is no building or structure on Plaintiff's lot. Plaintiff does not have a water meter, has not connected to any of Defendant Powder Mountain Water & Sewer's system(s) and no system or component thereof is physically on Plaintiff's property. Defendant Powder Mountain Water & Sewer has at no time supplied any water to the subject property and or sewer services. Stmt of Facts ¶¶ 9, 10, 17 & 18

"§ 10-8-38 does not authorize the charging of a sewer connection fee in the case of vacant lots." Banberry Development Corporation, v. South Jordan City 631 P.2d 899; 1981.

10-8-38. Drainage and sewage systems -- Construction regulation and control -- Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to tenants -- Failure to pay for service -- Service outside municipality.

(1) (a) Boards of commissioners, city councils, and boards of trustees of cities and towns may construct, reconstruct, maintain, and operate, sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment, and facilities necessary to the proper drainage, sewage, and sanitary sewage disposal requirements of the city or town and regulate the construction and use thereof.

(b) If any payment on a contract with a private person, firm, or corporation to construct or reconstruct sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and other drainage and sewage systems is retained or withheld, it shall be retained or withheld and released as provided in Section **13-8-5**.

(2) (a) In order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant, a municipality may:

(i) require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy; and

(ii) make a reasonable charge for the use of the sewer system.

As the Utah Supreme Court concluded in *Banberry Development v West Jordan* that “10-8-38 does not authorize the charging of a sewer connection fee in the case of vacant lots” and 10-8-38-2(ii) that the district “make a reasonable charge for the use of the sewer system. Defendant Powder Mountain Water and Sewer’s policy of charging vacant lots a “use fee” is in violation of Utah Code. The “Sewer Fees and Accessment 1985” states “all lots whether connected to the sewer or not will be charged a \$25.00 per month use fee”. Defendant Powder Mountain Water and Sewer has charged Plaintiff \$75.00 per quarter from July 1, 1985, through March 31, 1990, for “sewer charge(s)”. Defendant Powder Mountain Water and Sewer is not entitled to charge a “fee for non use” for vacant lots for sewer charges. Plaintiff has not “used” either the water and or sewer system of Defendant Powder Mountain Water and Sewer. Therefore Defendant Powder Mountain Water and Sewer’s charges are in violation of the Code of the State of Utah. Stmt of Facts ¶¶ 3, 5, 11, 17 & 18.

Defendant Powder Mountain Water & Sewer charges and or has charged the same or approximately the same “use fee” for a vacant lot as a property connected to the sewer. In 1985 “all lots whether connected to the sewer or not (were) charged a \$25.00 per month use fee”. Effective 2005, Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer stated that Sewer Monthly Service Fees for non connected lots was \$29.50 and \$34.00 for connected lots. Vacant lots do not use the sewer system. There exists a fundamental difference between vacant lots and connected lots. Charging vacant lots the same fee from 1985 to on or about 2005 and or a fee that approximates the fee for connected lots is

unreasonable and in violation of 10-8-38-2(ii) because the charge itself **is** unreasonable and vacant lot owners do not make use of the sewer system. Stmt of Facts ¶¶ 5 & 21.

In addition 17A-2-1321 provides for fees and charges for “services supplied by the service district” for water and sewer. Defendant Powder Mountain Water & Sewer has never supplied services for either water or sewer to Plaintiff. The plain and simple definition of “services supplied” does not include the absence of service, no water or no sewer services. There is a fundamental difference in Defendant Powder Mountain Water & Sewer capability of providing water and sewer service and actually providing that service.

17A-2-1321. Delinquent fees and charges.

The governing authority of a service district may, by ordinance or resolution, provide that **fees and charges for water, sewer, or garbage services supplied by the service district** shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity and with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

Again 17A-2-1321 provides for “fees and charges for water, **sewer**, or garbage services supplied by the service district”. Defendant Powder Mountain Water & **Sewer** does not supply water services or sewer services to vacant lots. Being able to charge property owners is conditioned on Defendant Powder Mountain Water & Sewer supplying **a** service. Simply stated, no service supplied no right to charge. Vacant lots are not supplied with water and or sewer service and therefore Defendant Powder Mountain Water & Sewer does **not** provide service to vacant lots. If Defendant Powder Mountain Water & Sewer can charge for water and sewer services that Defendant Powder Mountain Water & Sewer does not **provide** then why not garbage services to vacant lots that do not generate garbage? The **answer**, because Utah Code provides that fees and charges are for services supplied.

17A-2-1321 states that fees and charges not paid when due shall become a lien on the delinquent premise". The commonly accepted definition of "premises," is "a house or building with its grounds or appurtenances." The word premises, does not generally refer to a vacant lot, field or a location on a mountain. Again providing that as a condition for "fees and charges for water, sewer, or garbage services supplied by the service district" there has to be a "building used for human occupancy."

17A-2-416 requires "commodities, services, and facilities supplied" before there can be fees and or charges. A connected property receives commodities, services, and or facilities in the form of running water and being connected to the sewer system. A vacant lot receives none of the commodities, services, and or facilities that a connected property benefits by. Defendant Powder Mountain Water & Sewer therefore has no legal right to charge vacant lot owners a water use fee and or sewer use fee.

17A-2-416. Delinquent fees and charges to become lien when certified.

The governing authority of a service area may, by ordinance or resolution, provide that **fees and charges for commodities, services, and facilities supplied by the service area** shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with applicable penalties and applicable interest established in Section 59-2-1331 shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises as provided in Title 59, Chapter 2, Part 13

In 2004, 17A-2-416 was modified to exempt water and sewer service. 17A-2-416 prohibits the certification by the district for delinquent services for water furnished or sewer service furnished. It should therefore be unambiguous that 17A-2-416 prior to 2004 required "water furnished and or sewer service provided" prior to the Defendant Powder Mountain Water & Sewer charging Plaintiff and or attempting to certify any amount claimed due by Defendant Powder Mountain Water & Sewer. Defendant Powder Mountain Water & Sewer has not

“furnished” Plaintiff any water because Plaintiff’s property is vacant. Defendant Powder Mountain Water & Sewer has not “provided” Plaintiff any sewer service

17A-2-416. Delinquent fees and charges to become lien when certified.

The governing authority of a service area may, by ordinance or resolution, provide that fees and charges for commodities, services, and facilities supplied by the service area, except water furnished or sewer service provided by the county service area shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with applicable penalties and applicable interest established in Section 59-2-1331 shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises as provided in Title 59, Chapter 2, Part 13.

Amended by Chapter 316, 2004 General Session

17A-2-1321 provides “that fees and charges for water, sewer, or garbage services” have to be furnished and or supplied. Again Defendant Powder Mountain Water & Sewer has not furnished and or supplied and or provided water and or sewer and or garbage. If Defendant Powder Mountain Water & Sewer can charge Plaintiff for the water and sewer that it does not furnish or provide then why not for garbage services or fire protection to make sure that Plaintiff’s trees do not burn down or for beautification for the flowers in the meadows all of which make more sense than water that is not furnished or sewer that is not provided.

17A-2-1321. Delinquent fees and charges.

The governing authority of a service district may, by ordinance or resolution, provide that **fees and charges for water, sewer, or garbage services supplied by the service district** shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity and with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

In 2004, 17A-2-1321 was modified to exempt water and sewer services supplied for fees and charges not paid to be certified to the county.

17A-2-1321. Delinquent fees and charges.

(1) Except as provided in Subsection (3), the governing authority of a special service district may, by ordinance or resolution, provide that fees and charges for garbage or fire protection services **supplied by the special service district** shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located.

(2) These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

Amended by Chapter 316, 2004 General Session

Even though 17B-2-803 was passed in 2004, it clearly established the intent of the legislature that for a District to charge fees for water or sewer service, **water** has to be furnished and sewer service have to be provided.

17B-2-803. Lien for past due fees for water or sewer service -- Limitations.

(1) (a) A local district may certify past due service fees and other amounts for which the customer is liable under this chapter to the treasurer or assessor of the county in which the customer's property is located.

(b) Subject to Subsection (2), the past due service fees and other amounts for which the customer is liable under this chapter, upon their certification under Subsection (1)(a), become a lien on the customer's property to which the **water was furnished or sewer service provided**, on a parity with and collectible at the same time and in the same manner as general county taxes that are a lien on the property.

Amended by Chapter 316, 2004 General Session

17B-2-801 defines "Service fees" to "mean(s) the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property" and "Customer" as "the owner of real property to which a local district has furnished water or provided sewer service."

17B-2-801. Definitions.

As used in this part:

(1) "Collection costs" means an amount, not to exceed \$20, to reimburse a local district for expenses associated with its efforts to collect past due service fees from a customer.

(2) **"Customer" means the owner of real property to which a local district has furnished water or provided sewer service.**

(3) "Damages" means an amount equal to the greater of:

(a) \$100; and

(b) triple the past due service fees.

(4) "Default date" means the date on which payment for service fees becomes past due.

(5) "Past due service fees" means service fees that on or after the default date have not been paid.

(6) "Prelitigation damages" means an amount that is equal to the greater of:

(a) \$50; and

(b) triple the past due service fees.

(7) **"Service fees" means the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property.**

Just because of Plaintiff's ownership of property within Defendant Powder Mountain Water and Sewer's district, does not ipso facto make Plaintiff a customer of Defendant Powder Mountain Water and Sewer. Defendant Powder Mountain Water and Sewer has to have "furnished water or provided sewer service" for Plaintiff to be legally a customer of Defendant Powder Mountain Water and Sewer.

Defendant Powder Mountain Water and Sewer's policy of charging vacant lot owners aka "customer(s)" for service fees for water and sewer that Defendant Powder Mountain Water and Sewer has not provided violates Utah Code.

10-7-11, once more requires "water furnished" before the district may cause the water to be shut off. Defendant Powder Mountain Water and Sewer District's policy is to terminate the connections on vacant lots from water and sewer services for non payment of services that the owner never received and or the property owner has never used and then requires reapplication and payment at the going rate again for services that may not be used and or supplied. For Defendant Powder Mountain Water and Sewer District to terminate a vacant property owner's connection requires Defendant Powder Mountain Water and Sewer to do nothing. For Defendant Powder Mountain Water and Sewer District to reconnect a vacant property owner's connection requires Defendant Powder Mountain Water and Sewer to do nothing with the exception of an

accounting entry for which Defendant Powder Mountain Water and Sewer's policy requires a owner to reapply and pay the going rate for a new connection. Stmt of Facts ¶ 6.

10-7-11. Failure to pay for service

In case the owner of any of the premises mentioned in Section 10-7-10, or the tenant or occupant, shall fail to pay **for water furnished** such owner, tenant or occupant, according to such ordinances, rules or regulations enacted or adopted, the city or town may cause the water to be shut off from such premises, and shall not be required to turn the same on again until all arrears for water furnished shall be paid in full.

The litany of statutes under Utah Code requires at least one of the following conditions, the use of the sewer system, services supplied by the service district, facilities supplied by the service area, service provided by the county service area, water was furnished or sewer service provided and charges for water, sewer, or garbage services supplied prior to charging a customer. Any of which would require a water connection and or sewer connection that utilizes the district services before a property owner can be charged. Defendant Powder Mountain Water and Sewer charging a "use fee" for water and sewer clearly are in violation of numerous statutes of the State of Utah.

Charges for use of a sewer system are service charges, not taxes or assessments, because they were "payments for services furnished" and were "in the nature of tolls or rents paid for services furnished or available". In the case of Plaintiff's vacant lot there were no services furnished.

"Our prior cases distinguishing "service fees" from taxes or assessments are instructive. In *V-1 Oil Co. v. State Tax Commission*, we described a service fee as "a specific charge in return for a specific benefit to the one paying the fee." 942 P.2d 906, 911 (Utah 1996), vacated on other grounds, 942 P.2d 915, 918 (Utah 1997). We contrasted a service fee with a regulatory fee, which is a specific charge that defrays the government's cost of regulating and monitoring the class of entities paying the fee, and with a tax, which is a "general revenue-raising measure." *Id.* In an earlier case, *Murray City v. Board of Education of Murray City School District*, we determined that a monthly charge imposed for the use of a sewer system constituted a fee for services, not an assessment, and made the following distinction:

An assessment is imposed upon property within a limited area for an improvement to enhance all property within that area. On the other hand, the cost of a service is determined by the benefits conferred upon the occupants of the land rather than an increase in value to the land itself.

396 P.2d 628, 630 (Utah 1964) (citation omitted). Similarly, in Ponderosa One Limited Partnership v. Salt Lake City Suburban Sanitary District, we held that charges for use of a sewer system were service charges, not taxes or assessments, because they were "payments for services furnished" and were "in the nature of tolls or rents paid for services furnished or available." 738 P.2d 635, 637 (Utah 1987) (per curiam) (quoting 11 E. McQuillin, Municipal Corporations § 31.30 (3d revised ed. 1983))."

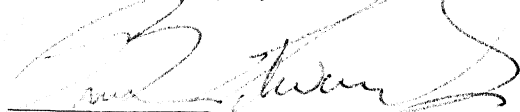
Board of Education of Jordan School District v Sandy City Corporation (Utah 2004)

Plaintiff has received no benefits from the water fees and or sewer fees that Defendant Powder Mountain Water and Sewer has charged Plaintiff. Since the benefits conferred upon the occupants determine the cost of the service and Plaintiff has not received any benefit Defendant Powder Mountain Water and Sewer can not as a matter of law charge Plaintiff for water and sewer services on a vacant lot.

The "Water Fee Schedule and Agreement July 1985" states "It ~~has~~ therefore become necessary to establish both a fee for non use on non connected lots as well as those connected to the system". The "Sewer Fees and Accessment 1985" stated that "all ~~lots~~ whether connected to the sewer or not will be charged a \$25.00 per month use fee". Clearly ~~the~~ fees charged by Defendant Powder Mountain Water and Sewer are service fees and not ~~t~~axes or assessments. Stmt of Facts ¶¶ 3 & 5.

For the foregoing reasons, this Court should grant partial summary judgment declaring Defendant Powder Mountain Water and Sewer District's charges on vacant lots for water and sewer "use fees" and or "service fees" in violation of the laws of the State of Utah.

DATED this 10 day of November, 2006.



Bruce Edwards

Tab 11

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IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

BRUCE EDWARDS

Plaintiff,
v.

POWDER MOUNTAIN INC.;
POWDER MOUNTAIN WATER AND
SEWER;

Defendants

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT THAT DEFENDANT
POWDER MOUNTAIN WATER AND
SEWER LIENS ARE OVERSTATED.**

Case No. 060901535

Judge ERNIE W. JONES
Case No.

Plaintiff, Pro Se, hereby submits that Defendant Powder Mountain Water & Sewer overstated the balance owed for water and sewer service fees on each lien filed by Defendant Powder Mountain Water & Sewer on May 15, 2002, April 27, 1998, and February 8, 1995.

There is no genuine issue as to any material fact concerning Plaintiff's motion.

Therefore, Plaintiff hereby moves this Court for summary judgment that the liens filed on May 15, 2002, April 27, 1998, and February 8, 1995 by Defendant Powder Mountain Water & Sewer for water and sewer service fees overstated the balance due to Defendant Powder Mountain Water & Sewer.

STATEMENT OF MATERIAL FACTS

1. That Defendant Powder Mountain Water and Sewer is a Special Improvement District created by Weber County. See Affidavit of Bruce Edwards ¶2.

2. That on or about June 25, 1985, Defendant Powder Mountain Water and Sewer District provided Plaintiff the July 1985, “Water Fee Schedule and Agreement” and 1985 “Sewer Fees and Accessment”. Affidavit of Edwards ¶ 3.
3. Plaintiff refused to activate the July 1985, agreement with Powder Mountain Water and Sewer. Affidavit of Edwards ¶4.
4. That on or about July 1, 1985, Plaintiff was sent his first bill by Defendant Powder Mountain Water and Sewer District. Affidavit of Edwards ¶ 5.
5. Plaintiff has at all times refused to make any payment that Defendant Powder Mountain Water and Sewer District demanded for water and sewer service fees. Affidavit of Edwards ¶ 6.
6. That on May 4, 1988, the directors of Defendant Powder Mountain Water and Sewer District resolved that “The board felt that the any further action at this time was not necessary because we are not furnishing any water or sewer service at present time but to let them reapply when the connections are needed at the going rate.” Affidavit of Edwards ¶ 7.
7. That on June 14, 1989, the Board of Directors of Defendant Powder Mountain Water and Sewer District made a motion to “send registered letter to delinquent accounts that have not made arrangements with the district to bring them current and inform them that their connection rights have been terminated as of July 1, 1989.” Affidavit of Edwards ¶ 8.
8. That on June 14, 1989, Defendant Powder Mountain Water and Sewer District terminated Plaintiff’s “connection rights” to water and sewer as of July 1, 1989 Affidavit of Edwards ¶ 9.
9. That Defendant Powder Mountain Water and Sewer District continued to charge Plaintiff for water and sewer including late fees up to March 31, 1990. Affidavit of Edwards ¶ 10.

10. That on February 8, 1995, Defendant Powder Mountain Water and Sewer, filed a notice of lien with the Weber County Recorder in the amount of \$20,685.00 for unpaid water and sewer fees. Affidavit of Edwards ¶ 11.

11. That on April 27, 1998, Defendant Powder Mountain Water and Sewer District, filed a notice of lien with the Weber County Recorder in the amount of \$32,126.00 for water and sewer hookups and lot improvements. Affidavit of Edwards ¶ 12.

12. That on May 15, 2002, Defendant Powder Mountain Water and Sewer District “certified for collection” water and sewer assessments to Margarit Nersisian, of the Weber County Clerk Auditor’s Office. See attached exhibit 7. Affidavit of Edwards ¶ 13.

13. That on May 31, 2002, the Weber County Clerk Auditor’s Office added Defendant Powder Mountain Water and Sewer District’s assessment on Plaintiff’s property in the amount of \$24,140.10 as a property tax to Plaintiff’s property. Affidavit of Edwards ¶ 14.

14. That Plaintiff has objected to Defendant Powder Mountain Water and Sewer’s water and sewer service fees. Affidavit of Edwards ¶ 15.

15. That Plaintiff has in Defendant Powder Mountain Water and Sewer District’s prior action against Plaintiff objected to Defendant Powder Mountain Water and Sewer water and sewer charges after the Board of Directors of Defendant Powder Mountain Water and Sewer District terminated Plaintiff on July 1, 1989. Affidavit of Edwards ¶ 16.

16. Defendant Powder Mountain Water and Sewer July 1985, “Water Fee Schedule and Agreement” stated “If not activated all agreements will be terminated as specified above”. Affidavit of Edwards ¶ 17.

17. Defendant Powder Mountain Water and Sewer “Water Fees Schedule and Agreement July 1985” When 90 days delinquent a notice will be sent notifying you that your contract with the water company is being terminated”. Affidavit of Edwards ¶ 18.

ARGUMENT

Powder Mountain Water and Sewer District filed liens against Plaintiff's property on April 27, 1998, in the amount of \$32,226.00 and on February 8, 1995, in the amount of \$20,685.00. In addition on May 31, 2002, Powder Mountain Water and Sewer District certified to the Weber County Clerk Auditor's Office that Plaintiff was indebted to Powder Mountain Water and Sewer District's in the amount of \$24,140.10 which was thereafter added as a property tax to Plaintiff's property. All three of the above liens for water, sewer and sewer assessments overstated the balance that Plaintiff could be obligated to Defendant Powder Mountain Water & Sewer. Statement of facts ¶¶ 10, 11, 12 & 13.

That on or about June 25, 1985, Defendant Powder Mountain Water and Sewer District provided Plaintiff the July 1985, "Water Fee Schedule and Agreement" and 1985 "Sewer Fees and Accessment". Plaintiff refused to activate the July 1985, agreement(s) with Powder Mountain Water and Sewer. That on or about July 1, 1985, Plaintiff was sent Plaintiff's first bill by Defendant Powder Mountain Water and Sewer District. Statement of facts ¶¶ 2, 3, 4 & 5.

Defendant Powder Mountain Water and Sewer began charging Plaintiff in July 1985. Defendant Powder Mountain Water and Sewer provided in the agreement that "If not activated all agreements will be terminated as specified above". Plaintiff refused and or failed to enter into the agreement with Defendant Powder Mountain Water and Sewer. Defendant Powder Mountain Water and Sewer policy was "When 90 days delinquent a notice will be sent notifying you that your contract with the water company is being terminated". Because the July 1985 "Water Fee Schedule and Agreement" provided that if Plaintiff failed to agree to the terms and conditions that Defendant Powder Mountain Water and Sewer dictated that Defendant Powder Mountain Water and Sewer would terminate Plaintiff's connection and Defendant Powder Mountain Water and Sewer having failed to act pursuant to the July 1985 "Water Fee Schedule

and Agreement” and continued to charge Plaintiff for water and sewer service fees to Plaintiff’s vacant lot at Defendant Powder Mountain Water and Sewer’s discretion. Defendant Powder Mountain Water and Sewer failed to mitigate Defendant Powder Mountain Water and Sewer’s damages. Defendant Powder Mountain Water and Sewer failure to terminate Plaintiff’s connection was based upon Defendant’s self interest and was arbitrary and capricious. Statement of facts ¶¶ 2, 3, 16 & 17.

On June 14, 1989, Plaintiff’s “connection rights” to water and sewer were terminated by the Board of Directors of Powder Mountain Water and Sewer District effective July 1, 1989. Since July 1, 1989, Plaintiff should have been charged only interest on the balance that Defendant Powder Mountain Water and Sewer District has alleged due but Defendant Powder Mountain Water and Sewer District continued to charge Plaintiff for water and sewer service fees to March 31, 1990, for an additional \$330.00 in water and sewer service fees plus \$45.00 in late fees. Defendant Powder Mountain Water and Sewer District continued to charge interest on the water and sewer service fees and late fees that were improperly added to Plaintiff’s account. Defendant Powder Mountain Water and Sewer had no legal right to charge Plaintiff for water and sewer service fees after Defendant Powder Mountain Water and Sewer had terminated Plaintiff’s “connection rights”. Statement of facts ¶¶ 7, 8 & 9.

38-1-25 provides that “who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed: (a) with the intent to cloud the title; (b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or (c) to procure any unjustified advantage or benefit is guilty of a class B misdemeanor”.

38-1-25. Abuse of lien right -- Penalty.

(1) Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which

contains a greater demand than the sum due to be recorded or filed:

(a) with the intent to cloud the title;

(b) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

(c) to procure any unjustified advantage or benefit.

(2) In addition to any criminal penalties under Subsection (1), a person who violates Subsection (1) is liable to the owner of the property or an original contractor or subcontractor who is affected by the lien for the greater of:

(a) twice the amount by which the wrongful lien exceeds the amount actually due; or

(b) the actual damages incurred by the owner of the property.

Amended by Chapter 257, 2001 General Session

38-1-25 Willful Overstatement, Misdemeanor

Any person entitled to record or file a lien under Section 38-1-3 is guilty of a class B misdemeanor who intentionally causes a claim of lien against any property, which contains a greater demand than the sum due to be recorded or filed:

(1) with the intent to cloud the title;

(2) to exact from the owner or person liable by means of the excessive claim of lien more than is due; or

(3) to procure any unjustified advantage or benefit.

Certainly Defendant Powder Mountain Water and Sewer District intentionally caused multiple liens to be filed against Plaintiff's property. Defendant Powder Mountain Water and Sewer District had actual notice that Plaintiff objected to the balance claimed due and Defendant Powder Mountain Water and Sewer District terminated Plaintiff's "connection rights" effective July 1, 1989, but continued to charge Plaintiff for water and sewer service fees until March 31, 1990. Each of the three liens filed by Defendant Powder Mountain Water and Sewer District "contains a greater demand than the sum due". Defendant Powder Mountain Water and Sewer District had the lien certified and signed multiple affidavits attesting to the balance of the other liens. The first two liens Defendant Powder Mountain Water and Sewer filed used the wrong interest rates and the balance was subsequently reduced by Defendant Powder Mountain Water and Sewer to \$24,140.10 from over \$50,000.00. Defendant Powder Mountain Water and Sewer has filed multiple suits against Plaintiff and failing to obtain relief certified the balance of \$24,140.10 that Defendant Powder Mountain Water and Sewer claims due to Weber County.

Defendant Powder Mountain Water and Sewer filed the lien with the intent to exact from Plaintiff, the owner or person liable, by means of the excessive claim of lien more than is due. Willfully overstating a lien amount is equivalent to a bad faith filing. Statement of facts ¶¶ 14 & 15.

Once Powder Mountain Water and Sewer District informed Plaintiff that Plaintiff's "connection rights" were terminated pursuant to the resolution of the Board of Directors of Powder Mountain Water and Sewer District, Powder Mountain Water and Sewer District can no longer charge Plaintiff for services that Powder Mountain Water and Sewer District will no longer provide and never provided in the first place. Powder Mountain Water and Sewer District charging Plaintiff for water and sewer services on a vacant lot after the Board of Directors of Powder Mountain Water and Sewer District had terminated Plaintiff's "connection rights" was arbitrary and capricious. Powder Mountain Water and Sewer District filling of three liens in an attempt to collect the water and sewer service fees that Powder Mountain Water and Sewer District are not legally entitled to by certification to Weber County and sworn affidavits, constitutes fraud.

On May 4, 1988, the Board of Directors of Powder Mountain Water and Sewer District stated "The board felt that the any further action at this time was not necessary because we are not furnishing any water or sewer service at present time but to let them [Delinquent members] reapply when the connections are needed at the going rate". Defendant Powder Mountain Water and Sewer as of May 4, 1988, required the Plaintiff to "reapply" for water and sewer connections and pay the "going rate". For Defendant Powder Mountain Water and Sewer to continue to charge Plaintiff for water and sewer service fees that Defendant Powder Mountain Water and Sewer doesn't even supply and thereafter maintain that Plaintiff would be subject to pay reconnection fees for a vacant lot in the amount of \$16,000.00 pursuant to the "Sewer Fees and

Accessment 1985 “and “Water Fee Schedule and Agreement July 1985” is egregious and in violation of Utah Code. Statement of facts ¶ 6.

Plaintiff has at all times refused to pay Defendant Powder Mountain Water and Sewer District and at no time has Plaintiff paid Defendant Powder Mountain Water and Sewer District. Plaintiff has at all times disputed the amount that Defendant Powder Mountain Water and Sewer District claimed due. Statement of facts ¶¶ 4 & 5.

That on February 8, 1995, Defendant Powder Mountain Water and Sewer filed a notice of lien with the Weber County Recorder in the amount of \$20,685.00 as of July 01, 1994, for unpaid water and sewer fees but Defendant Powder Mountain Water and Sewer District’s amended “Schedule of account Receivable” for Plaintiff dated December 15, 1999, Powder Mountain Water and Sewer District alleges that Plaintiff owed Defendant Powder Mountain Water and Sewer District \$13,524.34 on July 1, 1995. Statement of facts ¶ 10.

On April 27, 1998, Defendant Powder Mountain Water and Sewer District filed a notice of lien in the amount of \$32,226.00 as of April 1, 1998 but Defendant Powder Mountain Water and Sewer District’s amended “Schedule of account Receivable” for Plaintiff dated December 15, 1999, Powder Mountain Water and Sewer District alleges that Plaintiff owed Defendant Powder Mountain Water and Sewer District \$18,118.63 on April 1, 1998. Statement of facts ¶ 110.

That on May 15, 2002, Defendant Powder Mountain Water and Sewer District through Chuck Panter, Treasurer Powder Mountain Water and Sewer District, “certified for collection” water and sewer assessments to Margarit Nersisian, of the Weber County Clerk Auditor’s Office. That on May 31, 2002, the Weber County Clerk Auditor’s Office added Defendant Powder Mountain Water and Sewer District’s assessment on Plaintiff’s property in the amount of \$24,140.10 as a property tax to Plaintiff’s property. That the amount “certified” by Defendant Powder Mountain Water and Sewer District on May 31, 2002, included water and sewer service

fees after Plaintiff was terminated on July 1, 1989. Statement of facts ¶¶ 12 & 13.

Defendant Powder Mountain Water and Sewer has at all times until 2006 maintained that Plaintiff had entered into a contract with Defendant Powder Mountain Water and Sewer. In 2006 Defendant agreed that Plaintiff has never entered into any contract with Defendant. Utah code provides that “require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property”. Defendant Powder Mountain Water and Sewer submitted to Plaintiff an application, the July 1985 “Water Fee Schedule and Agreement”, and Plaintiff refused to sign Defendant Powder Mountain Water and Sewer’s agreement. Statement of facts ¶¶ 2 & 3.

17B-2-802 requires the owner’s written application to the district agreeing to pay for all water furnished or sewer service provided to the property.

17B-2-802. Authority to require written application for water or sewer service and to terminate for failure to pay—Limitations.

(1) A local district that owns or controls a system for furnishing water or providing sewer service may:

- (a) before furnishing water or providing sewer service to a property, **require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property**, whether occupied by the owner or by a tenant or other occupant, according to the rules and regulations adopted by the local district; and
- (b) if a customer fails to pay for water furnished or sewer service provided to the customer’s property, discontinue furnishing water or providing sewer service to the property, respectively, until all amounts for water furnished or sewer service provided, respectively, are paid, subject to Subsection (2).

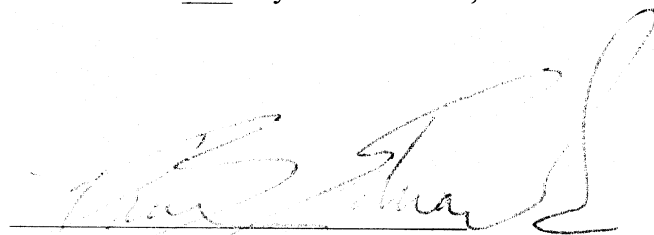
Further 17B-2-802-1 provides “before furnishing water or providing sewer service to a property, require the property owner or an authorized agent to submit a written application, signed by the owner or an authorized agent, agreeing to pay for all water furnished or sewer service provided to the property”. Defendant Powder Mountain Water and Sewer required signed contracts in July 1985 and stated that “If not activated all agreements will be terminated

as specified above. Plaintiff refused to sign any agreement with Defendant Powder Mountain Water and Sewer. 17B-2-802-1 does not authorize Defendant Powder Mountain Water and Sewer to provide water service and or sewer service to Plaintiff's vacant lot. Defendant Powder Mountain Water and Sewer charges for water service and sewer service not authorized by Plaintiff is unlawful. Stmt of Facts ¶¶ 2, 3 & 16.

There is no dispute as to the relative facts for this motion for summary judgment. Defendant Powder Mountain Water and Sewer District began charging Plaintiff for water, sewer and "sewer update" on July 1, 1985. On February 8, 1995, and on April 27, 1998, Defendant Powder Mountain Water and Sewer District filed liens against Plaintiff's property and then on May 15, 2002, certified to the Weber County Assessor \$24,120.10. All three liens included charges for water and sewer service fees after Defendant Powder Mountain Water and Sewer terminated Plaintiff's "connection fees". Plaintiff never entered into any agreement with Defendant Powder Mountain Water and Sewer and therefore Defendant Powder Mountain Water and Sewer had no authority to charge Plaintiff water and or sewer service fees.

For the foregoing reasons, this Court should grant partial summary judgment declaring that Defendant Powder Mountain Water and Sewer District's liens filed on February 8, 1995, April 27, 1998, and May 15, 2002, were overstated by Defendant Powder Mountain Water and Sewer.

DATED this 18 day of November, 2006.

A handwritten signature in dark ink, appearing to read "Bruce Edwards", is written over a horizontal line.

Bruce Edwards
Pro Se

Tab 12

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IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

BRUCE EDWARDS

Plaintiff,
v.

POWDER MOUNTAIN INC.; at al.,

Defendants

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT THAT DEFENDANT
POWDER MOUNTAIN WATER AND
SEWER BILLING POLICY
VIOLATES UTAH CODE**

Case No. 060901535

Judge ERNIE W. JONES

Plaintiff, Pro Se, hereby submits that Defendant Powder Mountain Water & Sewer billing policies for water and sewer service fees are in violation of Utah Codes.

There is no genuine issue as to any material fact concerning Plaintiff's motion.

Therefore, Plaintiff hereby moves this Court for partial summary judgment that Defendant Powder Mountain Water & Sewer policies for charging water and sewer services for water and sewer prior to Defendant Powder Mountain Water & Sewer providing water and or sewer service is in violation of the Utah State Codes.

STATEMENT OF MATERIAL FACTS

1. That Defendant Powder Mountain Water and Sewer is a Special Improvement District created by Weber County. See Affidavit of Bruce Edwards ¶ 2.
2. "Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer" effective 6-01-2005 stated that "(1) Late fee \$5.00 per month". Affidavit of

Bruce Edwards ¶ 3.

3. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective 6-01-2005 stated that “(2) Interest on delinquent accounts 2% per month on unpaid balance”. Affidavit of Bruce Edwards ¶ 4.

4. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective 6-01-2005 stated that “(3) Billing is on a quarterly basis, beginning January 1 of each year. Bills will be sent out by the 10th day of the first month of each quarter. Payment is due 30 days after billing date”. Affidavit of Bruce Edwards ¶ 5.

5. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective 6-01-2005 stated that “(4) Late charges will apply and interest will start if bill has not been paid by the due date, and will apply from the beginning day of the quarter until paid. A \$%.00 billing charge will be charged for each additional late notice that is required”. Affidavit of Bruce Edwards ¶ 6.

6. “Powder Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective 6-01-2005 stated that “(5) If the bill has not been paid by the end of the quarter, a registered notice will be sent notifying you that the water services will be terminated”. Affidavit of Bruce Edwards ¶ 7.

7. Mountain Water & Sewer Improvement District & Connection & Sewer Fees for Water & Sewer” effective 6-01-2005 stated that “(6) A thirty days grace period will be given following this notification during which time default may be corrected by paying all the back fees plus a \$100 fee for reinstatement of services. This charge is for each equivalent unit and not per meter.” Affidavit of Bruce Edwards ¶ 8.

ARGUMENT

Defendant Powder Mountain Water & Sewer policies for the collection of water and

sewer service fees without yet providing any water and sewer service is in violation of Utah Code.

Defendant Powder Mountain Water & Sewer billing is on a quarterly basis beginning on January 1st of each year. Bills are sent out by the 10th day of the first month of each quarter. Payment is due 30 days after the billing date. Therefore payment is due on January 31st. Stmt of Facts ¶ 4.

Thereafter Defendant Powder Mountain Water & Sewer policy is that "late charges will apply and interest will start if bill has not been paid by the due date and will apply from the beginning day of the quarter until paid. A \$5.00 (\$5.00) billing charge will be charged for each additional late notice that is required." Defendant Powder Mountain Water & Sewer bill sent out by January 10th is for water and sewer services for the month of January, February and March. Defendant Powder Mountain Water & Sewer charges a late fee 30 days after the billing date and charges interest from the beginning day of the quarter at that rate of 2% per month. Stmt of Facts ¶¶ 2, 3, 4 & 5.

Defendant Powder Mountain Water & Sewer charges approximately \$50.00 per month for water and sewer depending upon your location. Therefore Defendant Powder Mountain Water & Sewer would bill \$150.00 on or before the 10th day of January or the first month of each quarter which would thereafter be due 30 days after the billing date or January 31st. If the owner fails to pay Defendant Powder Mountain Water & Sewer, Defendant Powder Mountain Water & Sewer would then be able to charge a late fee on February 1st and charge interest from January 1st.

Defendant Powder Mountain Water & Sewer charges interest at the rate of 2% per month on unpaid service fees for service fees that Defendant Powder Mountain Water & Sewer has yet to provide. If payment is made in February, Defendant Powder Mountain Water & Sewer would charge 2% of \$150.00 for 3 months of service fees when Defendant Powder Mountain Water &

Sewer has only provided 1 month service. If payment was made to Defendant Powder Mountain Water & Sewer 15 days after Defendant Powder Mountain Water & Sewer had provided service, (at the end of the quarter), Defendant Powder Mountain Water & Sewer could have already charged over 8% in late interest, (if payment was made on April 15 for the water and sewer service provided for by Defendant Powder Mountain Water & Sewer ending March 31st), the property owners would have been subject to (2) interest penalty for January, February, March and April or over 8% interest.

17B-2-801. defines "Service fees" to "mean(s) "the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property" and "Customer" as "the owner of real property to which a local district has furnished water or provided sewer service."

17B-2-801. Definitions.

As used in this part:

- (1) "Collection costs" means an amount, not to exceed \$20, to reimburse a local district for expenses associated with its efforts to collect past due service fees from a customer.
- (2) **"Customer" means the owner of real property to which a local district has furnished water or provided sewer service.**
- (3) "Damages" means an amount equal to the greater of:
 - (a) \$100; and
 - (b) triple the past due service fees.
- (4) **"Default date" means the date on which payment for service fees becomes past due.**
- (5) "Past due service fees" means service fees that on or after the default date have not been paid.
- (6) "Prelitigation damages" means an amount that is equal to the greater of:
 - (a) \$50; and
 - (b) triple the past due service fees.
- (7) **"Service fees" means the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property.**

Defendant Powder Mountain Water & Sewer "service fees" which by definition is "the amount charged by a local district to a customer for water furnished or sewer service provided to the customer's property" is due pursuant to Defendant Powder Mountain Water & Sewer policy

before Defendant Powder Mountain Water & Sewer furnished water or provided sewer service. Defendant Powder Mountain Water & Sewer policy of charging for services prior to Defendant Powder Mountain Water & Sewer providing water and or sewer service violates Utah Code.

Pursuant to 17B-2-801 you can not be a “customer” of a district unless you’re the owner of real property to which a local district has furnished water or provided sewer service. Therefore Plaintiff, the owner of a vacant lot, can not be a “customer” of Defendant Powder Mountain Water and Sewer. Customers require service.

The “default date” which by definition means the date on which payment for service fees becomes past due can not take place prior to the water being furnished or the sewer service being provided to a customer’s property. Plaintiff can not be in default for two reasons, first Plaintiff is not a customer and second Defendant failed to furnish water and or supply sewer service to Plaintiff’s service. Defendant Powder Mountain Water & Sewer policy of charging water and sewer service fees quarterly in advance of providing water and sewer services and late charges and interest 30 days after the billing date is in violation of Utah Code.

10-8-38 provides Defendant Powder Mountain Water and Sewer may “make a reasonable charge for the use of the sewer system.” Defendant Powder Mountain Water and Sewer’s policy of charging in advance or prior to the use of the sewer is in violation of Utah Code.

10-8-38. Drainage and sewage systems -- Construction regulation and control -- Retainage -- Mandatory hookup -- Charges for use -- Collection of charges -- Service to tenants -- Failure to pay for service -- Service outside municipality.

(2) (a) In order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant, a municipality may:

(i) require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy; and

(ii) make a reasonable charge for the use of the sewer system.

In addition 17A-2-1321 provides for fees and charges for “services supplied by the service district” for water and sewer. Defendant Powder Mountain Water & Sewer does not supply services of either water or sewer prior to the billing date for any given billing.

17A-2-1321. Delinquent fees and charges.

The governing authority of a service district may, by ordinance or resolution, provide that **fees and charges for water, sewer, or garbage services supplied by the service district** shall, if not paid when due, be certified to the treasurer and assessor of the county in which the delinquent premises are located. These delinquent fees and charges, together with penalties and applicable interest shall, immediately upon this certification, become a lien on the delinquent premises on a parity and with and collected at the same time and in the same manner as general county taxes that are a lien on the premises.

Defendant Powder Mountain Water & Sewer does not supply water services or sewer services prior to sending statements charging for water and sewer service. Providing the service is conditioned on Defendant Powder Mountain Water & Sewer being able to charge property owners. Simply stated, no service supplied no right to charge.

17B-2-803 provides that for a District to charge fees for water or sewer service, water has to be furnished and sewer service have to be provided.

17B-2-803. Lien for past due fees for water or sewer service -- Limitations.

(1) (a) A local district may certify past due service fees and other amounts for which the customer is liable under this chapter to the treasurer or assessor of the county in which the customer's property is located.

(b) Subject to Subsection (2), the past due service fees and other amounts for which the customer is liable under this chapter, upon their certification under Subsection (1)(a), become a lien on the customer's property to which the **water was furnished or sewer service provided**, on a parity with and collectible at the same time and in the same manner as general county taxes that are a lien on the property.

17B-2-804 provides “a customer is liable to a local district for past due service fees and collection costs if” “the customer has not paid service fees before the default date”. 17B-2-804-5 provides that “This chapter may not be construed to limit a local district that furnishes water or

provides sewer service from obtaining relief to which it may be entitled under other applicable statute or cause of action”.

17B-2-804. Collection of past due fees for water or sewer service -- Civil action authorized.

(1) A customer is liable to a local district for past due service fees and collection costs if:

(a) the customer has not paid service fees before the default date;

(b) the local district mails the customer notice as provided in Section 17B-2-805; and

(c) the past due service fees remain unpaid 15 days after the local district has mailed notice.

(2) If a customer has not paid the local district the past due service fees and collection costs within 30 days after the local district mails notice, the local district may make an offer to the customer that the local district will forego filing a civil action under Subsection (3) if the customer pays the local district an amount that:

(a) consists of the past due service fees, collection costs, prelitigation damages, and, if the local district retains an attorney to recover the past due service fees, a reasonable attorney's fee not to exceed \$50; and

(b) if the customer's property is residential, may not exceed \$100.

(3) (a) A local district may file a civil action against the customer if the customer fails to pay the past due service fees and collection costs within 30 calendar days from the date on which the local district mailed notice under Subsection (1)(b).

(b) (i) In a civil action under this Subsection (3), a customer is liable to the local district for an amount that:

(A) consists of past due service fees, collection costs, interest, court costs, a reasonable attorney's fee, and damages; and

(B) if the customer's property is residential, may not exceed \$200

(ii) Notwithstanding Subsection (3)(b)(i), a court may, upon a finding of good cause, waive interest, court costs, the attorney's fee, and damages, or any combination of them.

(c) If a local district files a civil action under this Subsection (3) before 31 calendar days after the day on which the local district mailed notice under Subsection (1)(b), a customer may not be held liable for an amount in excess of past due service fees.

(d) A local district may not file a civil action under this Subsection (3) unless the customer has failed to pay the past due service fees and collection costs within 30 days from the day on which the local district mailed notice under Subsection (1)(b).

(4) (a) All amounts charged or collected as prelitigation damages or as damages shall be paid to and be the property of the local district that furnished water or provided sewer service and may not be retained by a person who is not that local district.

(b) A local district may not contract for a person to retain any amounts charged or collected as prelitigation damages or as damages.

(5) This chapter may not be construed to limit a local district that furnishes water or provides sewer service from obtaining relief to which it may be entitled under other applicable statute or cause of action.

Defendant Powder Mountain Water and Sewer's policy of charging "customer(s)" for service fees for water and sewer services that Defendant Powder Mountain Water and Sewer has not provided violates Utah Code.

10-7-11, once more requires "water furnished" before the district may cause the water to be shut off.

10-7-11. Failure to pay for service.

In case the owner of any of the premises mentioned in Section 10-7-10, or the tenant or occupant, shall fail to pay **for water furnished** such owner, tenant or occupant, according to such ordinances, rules or regulations enacted or adopted, the city or town may cause the water to be shut off from such premises, and shall not be required to turn the same on again until all arrears for water furnished shall be paid in full.

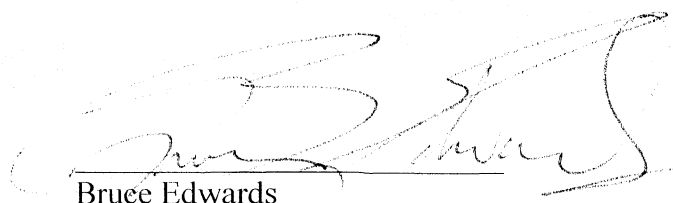
The litany of statutes under Utah Code all require that a district must provide water and or sewer service prior to the district charging a service fee for water or sewer services.

Defendant Powder Mountain Water and Sewer District charging a "use fee" prior to providing a service for water and sewer clearly is in violation of numerous statutes of the State of Utah.

Customers have not received a benefit from the water fees and or sewer fees that Defendant Powder Mountain Water and Sewer has charged prior to providing water and or sewer service. Since the **benefits conferred upon** the occupants determine the cost of the service and customers have not received any benefit, Defendant Powder Mountain Water and Sewer can not as a matter of law charge customers for water and sewer services that Defendant Powder Mountain Water and Sewer has yet to provide.

For the foregoing reasons, this Court should grant partial summary judgment declaring Defendant Powder Mountain Water and Sewer District's policy of charging service fees for water and sewer prior to providing water and or sewer service in violation of the laws of the State of Utah.

gh
DATED this ___ day of November, 2006.



Bruce Edwards
Pro Se

Tab 13

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IN THE SECOND JUDICIAL DISTRICT COURT
OF WEBER COUNTY STATE OF UTAH

BRUCE EDWARDS

Plaintiff,
v.

POWDER MOUNTAIN INC.;
POWDER MOUNTAIN WATER AND
SEWER;

Defendants

**MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY
JUDGMENT THAT DEFENDANT'S
CERTIFICATION ON MAY 17, 2001,
AND MAY 15, 2002, ARE VOID.**

Case No. 060901535

Judge ERNIE W. JONES

Plaintiff, Pro Se, hereby submits that the certification filed on May 17, 2001, by Catherine S. Conklin counsel for Defendant Powder Mountain Water & Sewer and the certification filed on is May 15, 2002, by Chuck Panter, Treasurer, of Defendant Powder Mountain Water and Sewer District fail to comply with Utah Code 17A-2-310-(3) and are therefore void.

There is no genuine issue as to any material fact concerning Plaintiff's motion.

STATEMENT OF MATERIAL FACTS

1. That Defendant Powder Mountain Water and Sewer is a Special Improvement District created by Weber County. See Affidavit of Bruce Edwards ¶2.
2. That on May 15, 2002, Defendant Powder Mountain Water and Sewer District "certified for collection" water and sewer assessments to Margarit Nersisian, of the Weber County Clerk

Auditor's Office. See Affidavit of Edwards ¶ 3.

3. That the May 15, 2002, letter to Margarit Nersisian, from Defendant Powder Mountain Water and Sewer District was on Defendant Powder Mountain Water and Sewer District's letter head and dated May 15, 2002. See Affidavit of Edwards ¶ 4.

4. That Chuck Panther signed the May 15, 2002, letter declaring the forgoing to be true under penalty of perjury. See Affidavit of Edwards ¶ 5.

5. That the May 15, 2002, letter was notarized on May 15th, 2002, by Julie A Simpson who listed her address as 205 26th Street, Ogden Utah. See Affidavit of Edwards ¶ 6.

6. That Steven Farr, counsel for Defendant Powder Mountain Water and Sewer District, address is 205 26th Street. See Affidavit of Edwards ¶ 7.

7. That Chuck Panter, Treasurer, of Defendant Powder Mountain Water and Sewer District stated under penalty of perjury in the May 15, 2002, letter that "None of the amount collected is for attorney's fees or anything other than water and sewer assessment". See Affidavit of Edwards ¶ 8.

8. That on May 31, 2002, the Weber County Clerk Auditor's Office added Powder Mountain Water and Sewer District's assessment on Plaintiff's property in the amount of \$24,140.10 as a property tax to Plaintiff's property. See Affidavit of Edwards ¶ 9.

9. Catherine S. Conklin on May 17, 2001, states that the district "Pursuant to U.C.A. 17A-2-310(3) hereby certifies the amount of \$24,120.10 to Weber County for collection". See Affidavit of Edwards ¶ 10.

10. That Catherine S. Conklin is not the clerk of the district. See Affidavit of Edwards ¶ 11.

11. That Catherine S. Conklin's May 17, 2001, letter was addressed to Nila Dayton, Treasurer, Weber County. See Affidavit of Edwards ¶ 12.

12. That Catherine S. Conklin failed to notify Plaintiff at any time of the amount that Powder Mountain Water and Sewer was going to certify to Weber County prior to the District certifying the amount of \$24,120.10 on May 15, 2002. See Affidavit of Edwards ¶ 13.

ARGUMENT

The certification filed on May 17, 2001, by Catherine S. Conklin counsel for Defendant Powder Mountain Water & Sewer and the certification filed on May 15, 2002, by Chuck Panter, Treasurer, of Defendant Powder Mountain Water and Sewer District fail to comply with Utah Code 17A-2-310-(3) and are therefore void.

Catherine S. Conklin on May 17, 2001, states that the district "Pursuant to U.C.A. 17A-2-310(3) hereby certifies the amount of \$24,120.10 to Weber County for collection". Catherine S. Conklin is not the clerk of the district as required by Utah code 17A-2-310-(3). Catherine S. Conklin failed to notify Plaintiff at any time of the amount that Powder Mountain Water and Sewer was going to certify to Weber County prior to certifying the amount of \$24,120.10 on May 15, 2002. See Stmt of Facts ¶¶ 9, 10 & 12.

That on May 15, 2002, Powder Mountain Water and Sewer District through Chuck Panter, Treasurer of Powder Mountain Water and Sewer District, "certified for collection" water and sewer assessments, in the amount of \$24,140.10, to Margarit Nersisian, of the Weber County Clerk Auditor's Office. That on May 31, 2002, the Weber County Clerk Auditor's Office added Powder Mountain Water and Sewer District's assessment on Plaintiff's property in the amount of \$24,140.10 as a property tax to Plaintiff's property. See Stmt of Facts ¶¶ 2, 7 & 8.

17A-2-310. Certification of bond issue to county legislative body -- Tax levy -- Payment of revenue bonds -- Election on general obligation bonds and revenue bonds -- Bonds for sewer purposes -- Collection of charges.

(3)When bonds are issued under this part in whole or in part for sewer purposes and the district operates a waterworks system, provision may be made in the bond resolution under which charges for sewer service and water are to be billed in a single bill to each customer and payment of the charge for water accepted only when the charge for sewer

service is paid at the same time. The board may agree to suspend water or sewer service, or both, to any customer who shall become delinquent in the payment of any charges due the district. Whether or not a district operates a waterworks system, **any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located.** The amount of the delinquent charges, together with interest and penalties, shall immediately upon the certification become a lien on the delinquent premises on a parity with and collectible at the same time and in the same manner as general county taxes are a lien on the premises and are collectible. All methods of enforcement available for the collection of general county taxes, including sale of the delinquent premises, shall be available and shall be used in the collection of the delinquent sewer charges. However, when the customer is a renter of residential property covered by Title 57, Chapter 22, any unpaid and delinquent charges are a personal liability for the customer and may not be placed as lien on the property.

17A-2-310. was amended by Chapter 316, 2004 General Session.

17A-2-310(3) in part provides “any unpaid and delinquent charges for sewer or water service shall be certified by the clerk of the district to the treasurer or assessor of the county in which the delinquent premises are located.” On May 17, 2001, Catherine S. Conklin’s letter to Netherland Township, Weber County, stated that Catherine S. Conklin represents Powder Mountain Water and Sewer District. Catherine S. Conklin does not state that she is the clerk of the district. Pursuant to 17A-2-310(3) only the clerk of the district shall certify any unpaid and delinquent charges for sewer or water service. See Stmt of Facts ¶ 11.

Black’s Law Dictionary defines “shall” as “As used in statutes, contracts, or the like, this word is generally imperative or mandatory. . . . In common or ordinary parlance, and in its ordinary signification, the term “shall” is a word of command, and one which has always or which must be given a compulsory meaning, as denoting obligation. . . . Therefore pursuant to 17A-2-310(3) the clerk of the district is the only party that is entitled by law to certify any unpaid and delinquent charges for sewer or water service district to the treasurer or assessor of the county.

When examining a statute, we look first to its plain language as the best indicator of the legislature's intent and purpose in passing the statute." Holmes v. American States Ins. Co., 2000 UT App 85, ¶10, 391 Utah Adv. Rep. 16 (quoting Wilson v. Valley Mental

Health, 969 P.2d 416, 418 (Utah 1998)). Therefore, "where the statutory language is plain and unambiguous, we do not look beyond the language's plain meaning to divine legislative intent." Horton v. Royal Order of the Sun, 821 P.2d 1167, 1168 (Utah 1991).

Because the plain language of 17A-2-310(3) mandates "the clerk of the district" to certify any unpaid and delinquent charges for sewer or water service and Catherine S. Conklin is not clerk of the district, there can be no certification of any amount that Defendant Powder Mountain Water and Sewer District alleged due on May 17, 2001. See Stmt of Facts ¶ 10.

Catherine S. Conklin's May 17, 2001, letter states that the district "Pursuant to U.C.A. 17A-2-310(3) hereby certifies the amount of \$24,120.10 to Weber County for collection" and therefore was aware of the requirements of U.C.A. 17A-2-310(3) but ignored the legal requirements of certification for unpaid and delinquent charges for sewer or water service. See Stmt of Facts ¶ 9.

Catherine S. Conklin's May 17, 2001, letter states that "assessments owed by Bruce Edwards" and "the district stopped billing him for an ongoing assessment". Defendant Powder Mountain Water and Sewer District has at all times maintained that the amount that Defendant Powder Mountain Water and Sewer District alleges due is an "assessment".

It is fundamental that statutes relating to special or local assessments are to be strictly construed against assessing authorities, and that they must be strictly followed in order to render the assessment valid, this general rule is found in 48 American Jurisprudence 783, Special or Local Assessments, Section 296. Therefore 17A-2-310(3) should be strictly construed against Defendant Powder Mountain Water and Sewer District.

In the letter dated May 15, 2002, to Margarit Nersisian, of the Weber County Clerk Auditor's Office, Chuck Panter, identifies himself as the Treasurer, of Defendant Powder Mountain Water and Sewer District under penalty of perjury and that "None of the amount collected is for attorney's fees or anything other than water and sewer assessment". Chuck

Panter does not identify himself as the clerk of the District and therefore the certification to Weber County fails to comply with 17A-2-310(3). See Stmt of Facts ¶¶ 4 & 7.

Utah Code 17A-2-305 provides that the board of trustees may not consist of less than three members and that the trustees shall appoint one of their members as chairman, clerk and treasurer.

Defendant Powder Mountain Water and Sewer District failed to have the clerk of the district certify the unpaid and delinquent charges for sewer or water service and Chuck Panter, the Treasurer, of Defendant Powder Mountain Water and Sewer District, “certified for collection” water and sewer assessments to Margarit Nersisian, of the Weber County Clerk Auditor’s Office. See Stmt of Facts ¶¶ 2 & 7.

Catherine S. Conklin on May 17, 2001, letter was addressed to Nila Dayton, Treasurer, Weber County but Chuck Panter’s letter dated May 15, 2002, was to Margarit Nersisian, of the Weber County Clerk Auditor’s Office. See Stmt of Facts ¶¶ 2 & 11.

Defendant Powder Mountain Water and Sewer District not only failed to have the clerk of the district certify the delinquent charges for sewer or water service but Defendant Powder Mountain Water and Sewer District in addition failed to certify the delinquent charges for sewer or water service to the “treasurer or assessor of the county” pursuant to 17A-2-310(3). Defendant Powder Mountain Water and Sewer District, “certified for collection” water and sewer assessments to Margarit Nersisian, of the Weber County Clerk Auditor’s Office. Weber County Clerk Auditor’s Office has no standing to certify delinquent charges for sewer or water service pursuant to 17A-2-310(3).

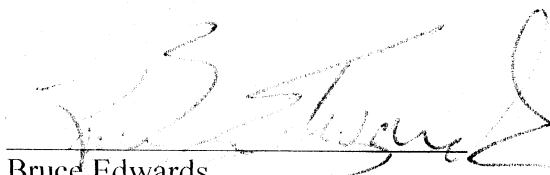
The May 15, 2002, letter was notarized by Julie A Simpson who listed her address as 205 26th Street, Ogden Utah. Steven Farr, counsel for Defendant Powder Mountain Water and Sewer District, address is 205 26th Street. Therefore it is reasonable to assume that Defendant Powder

Mountain Water and Sewer District had their counsel prepare the May 15, 2002, letter signed by Chuck Panter, Treasurer of Defendant Powder Mountain Water and Sewer District. See Stmt of Facts ¶¶ 5 & 6.

Catherine S. Conklin on May 17, 2001, states that the district “Pursuant to U.C.A. 17A-2-310(3) hereby certifies the amount of \$24,120.10 to Weber County for collection” and approximately one year thereafter Chuck Panter, Treasurer of Defendant Powder Mountain Water and Sewer District on May 15, 2002, “certified for collection” “water and sewer assessments”. There can only be one explanation why Defendant Powder Mountain Water and Sewer District refilled Defendant Powder Mountain Water and Sewer District’s certification on May 15, 2002, and that is because Catherine S. Conklin’s certification on May 17, 2001, was defective. In addition on May 31, 2002, the Weber County Clerk Auditor’s Office added Powder Mountain Water and Sewer District’s assessment on Plaintiff’s property in the amount of \$24,140.10 as a property tax to Plaintiff’s property. See Stmt of Facts ¶¶ 2, 8 & 9.

For the foregoing reasons, this Court should grant partial summary judgment declaring Defendant Powder Mountain Water and Sewer District’s certification filed on May 17, 2001, by Catherine S. Conklin counsel for Defendant Powder Mountain Water & Sewer and on May 15, 2002, by Chuck Panter, Treasurer of Defendant Powder Mountain Water and Sewer District in violation of Utah Code 17A-2-310(3) and therefore void.

DATED this 2nd day of February, 2007.


Bruce Edwards
Pro Se

Tab 14

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CATHERINE S. CONKLIN (#7487) of
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IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

OGDEN DEPARTMENT, STATE OF UTAH

BRUCE EDWARDS,	/	MEMORANDUM IN OPPOSITION
		TO PLAINTIFF'S MOTIONS FOR
Plaintiff,	/	PARTIAL SUMMARY JUDGMENT;
		REQUEST FOR ATTORNEY'S FEES
vs.	/	
POWDER MOUNTAIN INC., at al.,	/	
Defendants.	/	Civil No. 060901535
	/	Judge Ernie W. Jones

I. INTRODUCTION

Plaintiff has recently filed four separate motions for summary judgment, asking the court to rule:

1. That Defendant's billing policy violates Utah Code;
2. That Defendant's liens are overstated;
3. That Defendant's termination policy is in violation of Utah Code; and

4. That Defendant's charges for vacant lots violate Utah Code.

As argued below, these motions are moot based on the Court's recent ruling on the parties' previous motions. However, in the interest of caution, Defendant does not want to leave motions for summary judgment unanswered.

All of these motions argue essentially the same point: that Defendant has no right to bill Plaintiff in the manner that it has. As arguments against these motions are similarly repetitive, Defendant therefore submits this memorandum in opposition to all four motions. Defendant is also requesting an assessment of attorney's fees against Plaintiff, as it appears evident that these motions are not supported by law or fact and are brought solely to harass Defendant and intimidate Defendant into foregoing the moneys owed to it.

II. RESPONSE TO PLAINTIFF'S STATEMENTS OF UNDISPUTED MATERIAL FACTS.

For purposes of these motions only, Plaintiffs admit the material facts identified by Defendant.

II. A RGUMENT

A. THE ISSUES RAISED BY THESE MOTIONS ARE MOOT.

This Court has concluded that the District acted properly and within its authority in asserting the unpaid assessments for collection to Weber County. The Court has also ruled that all claims relating to Plaintiff's obligation to the District that existed at the time of the 2001 action are waived. The issues presently raised by Plaintiff are subsumed by that ruling. Even if the Court were to find at this juncture that there were some flaw in the District's billing procedures, it would make no practical difference. The County is now collecting the unpaid

balance, not the District, and as the County is not a party to this action, no ruling of this Court will have any effect on its collection.

B. PLAINTIFF IS BARRED FROM LITIGATING THESE ISSUES BY THE DOCTRINE OF ESTOPPEL.

As this Court recently ruled, Plaintiff is barred from litigating issues regarding the validity of the 1995 and 1998 liens by the compulsory counterclaim rule. The same rationale applies to Plaintiff's various complaints regarding Defendant's billing practices. All of these should have been raised in the earlier litigation. As no counterclaim was filed, this Court should conclude that Plaintiff is absolutely barred. Kimball v. Campbell, 699 P.2d 714, 716 (Utah, 1985) (citing Slim Olsen, Inc. v. Winegar, 246 P.2d 608, 610 (1952)).

C. PLAINTIFF'S CLAIMS ARE IMPROPERLY RAISED.

Plaintiff is arguing issues that should have been raised twenty years ago. In the event that a property owner disputes the reasonableness of any fee or billing method, these disputes may be heard either by the District itself or by the court. However, Plaintiff's legal remedy was to file suit challenging the legitimacy of the fees at the time they were imposed so that the court could determine their reasonableness at the time of assessment.

This remedy is outlined in Banberry Development Corp. v. South Jordan City, 631 P.2d 899 (Utah, 1981). As outlined by the Supreme Court, the governmental entity imposing the assessment is entitled to a presumption of constitutionality and validity. The challenger bears the burden of establishing that the fees are unreasonable. Id. at 904.

This procedure was clearly available to Plaintiff when the District began billing him in 1985. One would think that if Plaintiff genuinely had an issue with the District's actions, he

would have taken the matter to court at that point. At a minimum, Plaintiff should have done something when his right to connect to the sewer system was terminated for nonpayment in 1988. To expect Defendant to go back more than twenty years to prove the validity of these assessments is inherently unreasonable.

D. FEES MAY BE ASSESSED ON UNIMPROVED LOTS.

To get to the crux of Plaintiff's argument, his primary concern appears to be whether the District has the authority to bill him at all given that he has not yet constructed a home on his lot. Plaintiff has cited no authority for the proposition that his lot is exempt from paying for the costs of the sewer system just because he hasn't used it yet. Plaintiff suggests that Banberry contains such language, but, to the contrary, Banberry established that any fee ultimately may be upheld if it is reasonable under the circumstances.

The Utah Supreme Court has considered this issue twice in the context of assessments for homeowner's associations. In both cases, it was alleged that it is fundamentally unfair to assess a landowner for a service that does not directly benefit his or her property. In each case, the Supreme Court held that such an assessment is proper even if there is no direct benefit.

[A]llowing members to pay only for the services from which they directly benefit could result in complicated bookkeeping and numerous disputes . . . In addition, such a requirement creates the realistic prospect, highlighted by the present case, of projects that are gerrymandered only to meet some artificial benefit requirement.

Workman v. Brighton Properties, Inc., 976 P.2d 1209, 1212 -1213 (Utah,1999).

Thus, the Court concluded that the requirement that a landowner pay an assessment is not based on whether or not the land benefits directly, but on the terms of the governing documents, in this case the by-laws of the Special Improvement District. Id. See also Turner v. Hi-Country

Homeowners Ass'n, 910 P.2d 1223, 1226 (Utah 1996). Plaintiff's argument that he is somehow not obligated to pay for water and sewer assessments just because he hasn't constructed a home yet is without merit.

III. REQUEST FOR FEES


As this Court noted in its recently issued Order to Show Cause, there appears to be a strong likelihood that this entire action has been filed solely to harass the District and force it to spend attorney's fees. Perhaps Plaintiff hopes that the District might be compelled to retract its certification of the fees to Weber County, if a retraction is even possible.

Whatever Plaintiff's true motivation, these recently filed motions are certainly unwarranted and harassing in nature. Plaintiff filed these motions without even waiting for a ruling from the Court on his previous motion. For anyone to file four motions for summary judgment at once is oppressive, and in this case the motions addressed events that took place twenty years ago. Further, the motions are not grounded in either law or fact under Rule 11(b). It is simply inequitable for Plaintiff, who incurs no fees, to sit back and crank out pleading after pleading, knowing that the District will incur significant fees to respond. The District therefore asks that as a sanction, this Court order Plaintiff to reimburse the District for the fees expended in responding to these motions. Defense counsel proffers at this time that the fees expended total \$1,000.00, representing five hours of work at \$200.00 per hour. This time was primarily expended in reviewing the voluminous pleadings and trying to determine what, exactly, Plaintiff was arguing. A separate affidavit verifying the fees can be filed at a later time if the Court so directs.

IV. CONCLUSION

To the extent that they are not controlled by this Court's previous ruling, these motions should be denied. Plaintiff should also be ordered to reimburse the District for the attorney's fees expended in responding to the motions.

DATED this 14 day of December, 2006.



CATHERINE S. CONKLIN
Attorney for Defendants

Tab 15

Constitution :

Utah Const. Art. I, § 1. .Inherent and inalienable rights.

Section 1. [Inherent and inalienable rights.] All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire, possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Statutes:

Utah Code Ann. § 10 -8 -38.

Drainage and sewage systems -- Construction regulation and control -- Retainage -
- Mandatory hookup -- Charges for use -- Collection of charges -- Service to
tenants -- Failure to pay for service -- Service outside municipality.

(1) (a) Boards of commissioners, city councils, and boards of trustees of cities and towns may construct, reconstruct, maintain, and operate, sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and all systems, equipment, and facilities necessary to the proper drainage, sewage, and sanitary sewage disposal requirements of the city or town and regulate the construction and use thereof.

(b) If any payment on a contract with a private person, firm, or corporation to construct or reconstruct sewer systems, sewage treatment plants, culverts, drains, sewers, catch basins, manholes, cesspools, and other drainage and sewage systems is retained or withheld, it shall be retained or withheld and released as provided in Section 13-8-5.

(2) (a) In order to defray the cost of constructing, reconstructing, maintaining, or operating a sewer system or sewage treatment plant, a municipality may:

(i) require connection to the sewer system if the sewer is available and within 300 feet of the property line of a property with a building used for human occupancy; and

(ii) make a reasonable charge for the use of the sewer system.

(b) A municipality operating a waterworks system and a sewer system or sewage treatment plant may:

(i) make one charge for the combined use of water and the services of the sewer system or sewage treatment plant; and

(ii) adopt an ordinance requiring a property owner desiring water and sewer service to submit a written application, signed by the owner or the owner's authorized agent, agreeing to pay, according to the ordinance enacted by the municipality, for the water and sewer service furnished the owner.

(c) (i) If a person fails to connect to the sewer when connection is required under Subsection (2)(a)(i) or fails to pay for the sewer service as required under applicable municipal ordinances, then the municipality may cause the water to be shut off from the premises until the person has:

(A) hooked up to the sewer at the person's own expense; or

(B) paid in full for all sewer service.

(ii) A municipality may not use an owner's failure to pay for sewer service furnished to the owner's property as a basis for not furnishing water to the property after ownership of the property is transferred to a subsequent owner.

(d) A municipality may sell and deliver water or sewer services to others beyond the limits of the municipality from the surplus capacity of the municipality's waterworks or sewer system.

Amended by Chapter 316, 2004 General Session

Utah Code Ann. § 78-2a-3

Court of Appeals jurisdiction.

(1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all writs and process necessary:

(a) to carry into effect its judgments, orders, and decrees; or

(b) in aid of its jurisdiction.

(2) The Court of Appeals has appellate jurisdiction, including jurisdiction of interlocutory appeals, over:

(a) the final orders and decrees resulting from formal adjudicative proceedings of state agencies or appeals from the district court review of informal adjudicative proceedings of the agencies, except the Public Service Commission, State Tax Commission, School and Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas, and Mining, and the state engineer;

(b) appeals from the district court review of:

(i) adjudicative proceedings of agencies of political subdivisions of the state or other local agencies; and

(ii) a challenge to agency action under Section **63-46a-12.1**;

(c) appeals from the juvenile courts;

(d) interlocutory appeals from any court of record in criminal cases, except those involving a charge of a first degree or capital felony;

(e) appeals from a court of record in criminal cases, except those involving a conviction or charge of a first degree felony or capital felony;

(f) appeals from orders on petitions for extraordinary writs sought by persons who are incarcerated or serving any other criminal sentence, except petitions constituting a challenge to a conviction of or the sentence for a first degree or

capital felony;

(g) appeals from the orders on petitions for extraordinary writs challenging the decisions of the Board of Pardons and Parole except in cases involving a first degree or capital felony;

(h) appeals from district court involving domestic relations cases, including, but not limited to, divorce, annulment, property division, child custody, support, parent-time, visitation, adoption, and paternity;

(i) appeals from the Utah Military Court; and

(j) cases transferred to the Court of Appeals from the Supreme Court.

(3) The Court of Appeals upon its own motion only and by the vote of four judges of the court may certify to the Supreme Court for original appellate review and determination any matter over which the Court of Appeals has original appellate jurisdiction.

(4) The Court of Appeals shall comply with the requirements of Title 63, Chapter 46b, Administrative Procedures Act, in its review of agency adjudicative proceedings.

Amended by Chapter 302, 2001 General Session

Amended by Chapter 255, 2001 General Session

Utah Code Ann. § 78-27-56

Attorney's fees -- Award where action or defense in bad faith -- Exceptions.

(1) In civil actions, the court shall award reasonable attorney's fees to a prevailing party if the court determines that the action or defense to the action was without merit and not brought or asserted in good faith, except under Subsection (2).

(2) The court, in its discretion, may award no fees or limited fees against a party under Subsection (1), but only if the court:

(a) finds the party has filed an affidavit of impecuniosity in the action before the court; or

(b) the court enters in the record the reason for not awarding fees under the provisions of Subsection (1).